

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,	:	Criminal Case
	:	No. 20-CR-00239-TSE
Plaintiff	:	
v.	:	
	:	
EL SHAFEE ELSHEIKH,	:	April 13, 2022
	:	9:10 a.m.
Defendant	:	
.....	:

TRANSCRIPT OF TRIAL PROCEEDINGS
VOLUME 12
BEFORE THE HONORABLE T.S. ELLIS, III
UNITED STATES DISTRICT JUDGE
and a jury

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P R O C E E D I N G S

THE COURT: Good morning. The record will reflect this is United States against Elsheikh, 20-CR-239. And the defendant and counsel are present and prepared to proceed.

We will begin today with closing arguments, first by the government and then the defendant. I don't know whether they will be completed prior to the morning break. It may be that after the government's argument, we'll have to take a morning break, and after that break we'll hear from defense counsel. And then, if that doesn't take too long, we'll hear the government's rebuttal, I hope before the luncheon recess. And then instructions will be provided -- or will be given to the jury after the luncheon recess.

All right. You may bring the jury in, please, sir.

(Jury in at 9:07 a.m.)

THE COURT: Good morning, ladies and gentlemen. Again, we'll begin as always with the deputy clerk calling the roll.

COURTROOM CLERK: Juror 15, Laura Ann Younger.

JUROR: Present.

COURTROOM CLERK: Juror Number 29, Wayne Phoel.

JUROR: Present.

COURTROOM CLERK: Juror Number 3, James Bailes.

JUROR: Present.

COURTROOM CLERK: Juror Number 20, Alfred Keyser.

JUROR: Present.

1 COURTROOM CLERK: Juror Number 50, Esthar Zangeneh.

2 JUROR: Present.

3 COURTROOM CLERK: Juror Number 22, John Kugelman.

4 JUROR: Present.

5 COURTROOM CLERK: Juror Number 26, Jennifer Murray.

6 JUROR: Present.

7 COURTROOM CLERK: Juror Number 14, Anne Fay.

8 JUROR: Present.

9 COURTROOM CLERK: Juror Number 10, Erica Denham.

10 JUROR: Present.

11 COURTROOM CLERK: Juror Number 30, Camille Morrison.

12 JUROR: Present.

13 COURTROOM CLERK: Juror Number 47, Adrian White.

14 JUROR: Present.

15 COURTROOM CLERK: Juror Number 14, Mirenda Fields.

16 JUROR: Present.

17 COURTROOM CLERK: Juror Number 22, Gwendolin McCrea.

18 JUROR: Present.

19 COURTROOM CLERK: Juror Number 17, Lewis Hoge.

20 JUROR: Present.

21 COURTROOM CLERK: Juror Number 26, Eileen Liles.

22 JUROR: Present.

23 COURTROOM CLERK: Juror Number 39, Ralph Stallings.

24 JUROR: Present.

25 COURTROOM CLERK: Juror Number 7, Laura Buschman.

1 JUROR: Present.

2 THE COURT: Good morning, ladies and gentlemen. I hope
3 and trust that you had a quiet, restful evening, and thank you
4 for being so prompt. You've been prompt fairly regularly, and
5 the Court appreciates that.

6 We'll begin today with closing arguments. Now, in the
7 course of the closing arguments, counsel are entitled - and,
8 indeed, the purpose of their oral argument is - to summarize and
9 interpret the evidence as they see it for you. However, if any
10 difference appears to you between the evidence as they say it is
11 and the evidence as you recall it, it is your recollection that
12 controls, because you're the sole judges of the facts of this
13 case.

14 Counsel are also, in their closing arguments, entitled
15 to refer to the Court's instructions. They know what
16 instructions I'm going to give. And they're entitled to mention
17 or refer to those instructions if they see fit to do so.
18 However, once again, if any difference appears to you between
19 the instructions as I give them to you and the instructions as
20 the lawyers say they are, you are to be guided, of course, by
21 what I say the instructions are.

22 Now, these arguments will be in the neighborhood - it's
23 a large neighborhood - of about an hour. And I will let you
24 plan on a break after about an hour and a half or thereabouts.
25 We'll see. But, as always, I've given each of you the privilege

1 of raising your hands, giving me the sports "time" signal if you
2 urgently need a recess. And I'll do it. And I will not inquire
3 of you, if you've raised your hand or given me the sports "time"
4 signal, the reason for your request. It will be granted and
5 that's it.

6 But I ask that you not avail yourselves of that
7 privilege unless it's truly necessary, truly an exigent reason.

8 All right. Mr. Parekh, are you ready to make your
9 closing argument on behalf of the government?

10 MR. PAREKH: I am, Your Honor.

11 THE COURT: All right. And as you can see, ladies and
12 gentlemen, we've moved the podium so that counsel will be facing
13 you all. They are admonished to remain at the podium. They --
14 it's not like a TV program where they walk around and walk up to
15 the jury and that sort of thing. He'll stay there, and
16 Ms. Ginsberg, who will argue for the defendant, will stay there.

17 All right. Mr. Parekh, you may proceed, sir.

18 MR. PAREKH: Thank you, Your Honor. Members of the
19 jury, I want to begin my closing argument by thanking you for
20 the enormous personal and professional sacrifices that you have
21 all made for the past few weeks during this trial. You have sat
22 patiently and tentatively through many hours of often harrowing
23 testimony, and heard 35 witnesses testify.

24 I submit to you that all the evidence you've seen and
25 heard all points in the same direction. El Shafee Elsheikh,

1 beyond any reasonable doubt, is one of the three ISIS Beatles
2 who are collectively responsible for once holding 26 Western
3 hostages. And as you've heard throughout this trial, the
4 horrifying and inhumane hostage-taking scheme that this
5 defendant and his co-conspirators carried out on behalf of ISIS
6 resulted in the deaths of four American citizens, as well as the
7 deaths of British and Japanese nationals.

8 You know through this trial that Mohammed Emwazi is
9 undeniably the executioner in the ISIS beheading videos. But
10 now I submit to you that the first core question for you to
11 decide is whether this defendant, El Shafee Elsheikh, is one of
12 the three notorious ISIS Beatles.

13 For the past few weeks, ladies and gentlemen, we have
14 built for you a mosaic of evidence. Some pieces may be bigger
15 than others, but together they form a clear and complete
16 picture.

17 Let's talk about the defendant and his two
18 co-conspirators that became the ISIS Beatles. The evidence
19 demonstrates that they grew up together, radicalized together,
20 fought as high-ranking ISIS fighters together, held hostages
21 together, tortured and terrorized hostages together, and after
22 Emwazi was killed, Elsheikh and Kotey were ultimately captured
23 together in Syria.

24 Let's start with the most obvious reason to conclude
25 that Elsheikh was one of the three notorious Beatles. He

1 brazenly told you himself. You've watched video clip after
2 video clip of interviews in which the defendant admitted to and
3 described in granular detail his integral and essential
4 participation in the crimes that we've charged here which form
5 the horrendous criminal conduct in this case. From his
6 admissions about taking email addresses and proof-of-life
7 questions and answers from the hostages, to physically beating
8 the hostages, to participating in the execution of the Syrian
9 hostage.

10 But before we get to Elsheikh's media interviews, I
11 would like to walk you through the evidence that, standing
12 completely on its own, proves beyond a reasonable doubt that
13 Elsheikh is, in fact, an ISIS Beatle.

14 How did Elsheikh, Emwazi, and Kotey become The Beatles?
15 Elsheikh knew Emwazi and Kotey from the United Kingdom before
16 they all traveled to Syria. You've heard from released hostages
17 throughout this trial who have testified that The Beatles
18 treated each other like friends, they seemed to know each other
19 well, and acted as a trio and as a unit. Elsheikh, Emwazi, and
20 Kotey, all traveled to Syria in 2012 for the same reason, within
21 close proximity to each other. Elsheikh and Emwazi both
22 reported to the same ISIS supervisor since 2013; Elsheikh said
23 that he was depressed after Emwazi had died; and then Elsheikh
24 and Kotey were captured together in Syria in 2018.

25 Former ISIS member Omer Kuzu testified that Elsheikh

1 and who you know as Kotey appeared to be a duo and they acted as
2 a tag team. Yet upon their capture, Elsheikh and Kotey both
3 used false names, they both claimed to be from Yemen. They both
4 claimed to only speak Arabic. And when Elsheikh was shown a
5 photo of Kotey, he said Kotey's name was Yahya Ibrahim, and
6 Elsheikh claimed that he had just recently met Kotey the day he
7 attempted to be smuggled out of Syria into Turkey. To the very
8 end, ladies and gentlemen, the ISIS Beatles were protecting each
9 other.

10 So how did their radicalization journey begin? You
11 heard evidence of the EDL protest in London which was held on
12 the 10th anniversary of the 9/11 attacks. Who was arrested
13 there? Elsheikh and Kotey. This unique event is one of many
14 building blocks that helped prove up the identity of Elsheikh as
15 a Beatle.

16 This is a photograph of Elsheikh and Kotey on 9/11 in
17 2011 when -- right before they were arrested together.
18 Federico Motka testified that Ringo, one of the three Beatles,
19 spoke about the English Defence League and getting into a
20 confrontation with them outside of a pub. Edouard Elias heard
21 The Beatles speak about the English Defence League at The
22 Riverside Prison in Raqqa. Federico Motka also testified that
23 John Cantlie told him that Ringo mentioned the English Defence
24 League.

25 During the trial, you were probably wondering: Why is

1 the government admitting this evidence, the handwritten letter
2 that Elsheikh confirmed was accurate? Well, this is significant
3 identification evidence. Back in 2011, Elsheikh signs and
4 confirms his statement. Alexandra Kotey, with whom he was
5 arrested, does not give a statement. This is a very specific
6 event that happened on a very specific date involving very
7 specific people. This statement confirms what he, Ringo, stated
8 to Motka, Elias, and Cantlie: Pub, English Defence League.
9 That's not mere coincidence, ladies and gentlemen. That's
10 confirmation.

11 You heard the hostages testify about all the prison
12 locations where they were held. And you heard in 2013 they were
13 held in Idlib and Aleppo, and then they were moved to Raqqa in
14 2014. These prison locations match Elsheikh's confession to
15 FBI Special Agent John Chiappone. Elsheikh admitted that he
16 lived in the very same cities at the very same time the hostages
17 were held there.

18 Abu Idris. You heard a lot about him during this
19 trial. Who told Special Agent Chiappone that he knew Abu Idris
20 personally in Syria, a high-ranking ISIS terrorist that went on
21 to commit an atrocious terrorist attack at the Brussels airport
22 in 2016, and someone Elsheikh said to the FBI in 2018, before he
23 participated in any interviews whatsoever, that he was,
24 quote/unquote, "a good guy"? That was El Shafee Elsheikh.

25 Abu Idris is also the same subordinate guard who spoke

1 French that the hostages testified accompanied the
2 English-speaking British Beatles at several prison locations.
3 Patricia Chavez Mejia testified that Abu Idris was with
4 The Beatles when they asked her for email addresses.
5 Frida Saide testified that Abu Idris was with The Beatles when
6 The Beatles appeared at The Riverside Prison. Nicolas Hénin
7 told you that Abu Idris told the hostages that the more they saw
8 The Beatles, the better it was for them, because they were in
9 charge of hostage negotiations.

10 And then Elsheikh told the FBI in March 2018, before he
11 participated in any media interviews, that he knew Abu Idris in
12 Syria and that they had the same ISIS supervisor. Elsheikh also
13 stated that Emwazi reported to the same supervisor as Elsheikh
14 and Abu Idris. Again, ladies and gentlemen, that's not mere
15 coincidence. That's corroboration that Elsheikh is, in fact,
16 one of the ISIS Beatles.

17 You saw this photo a number of times during trial. Who
18 sent the picture of himself in "Rambo mode" to his brother
19 wearing the same exact clothing that Edouard Elias testified was
20 worn by The Beatles? This defendant, who is shown in this
21 photograph.

22 You also heard from former ISIS member Omer Kuzu who
23 said that when he first saw Elsheikh in Raqqa, Syria, he was
24 wearing a green beanie hat on his head and green military
25 clothing. He also identified this photograph. And then

1 Didier Francois testified that the three Beatles wore battle
2 dress, tactical vests, military boots with ammunition and radios
3 in their vest. You heard about the Glock throughout this trial.
4 And Omer Kuzu testified that he saw Elsheikh on multiple
5 occasions with the Glock pistol. He said Glocks are a symbol of
6 ISIS aristocracy.

7 As Judge Ellis stated, you're the sole judges of
8 witnesses' credibility and evidence in this case, end of story.
9 Let me explain to you why we put Mr. Kuzu on the stand. The
10 purpose of Mr. Kuzu's testimony, ladies and gentlemen, was to
11 fill out what Elsheikh was doing after all the hostages were
12 released or were killed. Because Elsheikh, as you've heard
13 throughout this trial, never withdrew from ISIS. He was always
14 a part of the violent terrorist organization. And so Kuzu
15 testified so that he can explain to you and so that you weren't
16 left wondering, what happened after Kayla Mueller died? What
17 did Elsheikh do from 2015, February, March, all the way through
18 his date of capture?

19 Well, Omer Kuzu filled in those gaps so you didn't have
20 to guess what Elsheikh was up to. He said that Elsheikh was
21 working on a special project whereby ISIS departments and ISIS
22 leaders could securely communicate with each other, and that he
23 had to be trusted in order to work on that special project. He
24 was secretive, never told them directly what he was working on,
25 and he seemed to be more important than other ISIS leaders. He

1 appeared to command respect, along with his friend, who you now
2 know is Alexandra Kotey, the other alleged Beatle.

3 Let's get back to the Glock. Nicolas Hénin testified
4 that all three Beatles had Glock pistols. No other guards did.
5 Edouard Elias testified that The Beatles had Glocks.
6 Didier Francois testified that the Glocks were unusual during
7 their captivity and only The Beatles had them.
8 FBI Special Agent Chiappone, when he interviewed Elsheikh,
9 testified that Elsheikh told him he owned a Glock when he was
10 with ISIS in Syria. So we've corroborated this six ways to
11 Sunday, ladies and gentlemen. It points, once again, to
12 Elsheikh being one of the three Beatles.

13 You heard a lot about the 17th Division. Right? A
14 significant ISIS battle, as you were told throughout this trial.
15 When Special Agent Chiappone testified, he talked about how
16 Elsheikh specifically stated that he went on military missions
17 with ISIS. Guess what? He only named two individuals,
18 Mohammed Emwazi and Alexandra Kotey. Those are the two
19 individuals that he named that he went on military missions with
20 on behalf of ISIS. Didn't name anyone else. Three Beatles,
21 three names.

22 You heard this voice clip played.

23 (Audiotape played in open court.)

24 MR. PAREKH: This is Elsheikh, as you know, describing
25 to you what's happening as that 17th Division battle is

1 unfolding or ending. There's heads and bodies at the
2 roundabout. You saw those pictures. I'm not going to display
3 them now, but they're in evidence, and they'll be available for
4 you to look at during your deliberations if you so choose.

5 Why is this significant? When Emwazi died, ISIS
6 eulogized him. And you have two ISIS eulogies of
7 Mohammed Emwazi in evidence. Both eulogies mention specifically
8 that Emwazi participated in the 17th Division battle that's
9 shown at the top of this slide, that's taken directly from
10 Government Exhibit 1-39, page 22. And you'll also have it, I
11 believe, in 1-52.

12 So, again, Elsheikh mentions that he went on this
13 battle. He mentions Mohammed Emwazi and Alexandra Kotey, and
14 this was so important to ISIS that they mention it in Mohammed
15 Emwazi's eulogy.

16 And I should also note that the heads and bodies that
17 Elsheikh talked about, and the decapitated heads that he sent,
18 you saw in evidence that that was sent towards the end of
19 July 2014. What happened just a few weeks later? The first
20 American hostage was beheaded. Elsheikh knew what the terrorist
21 organization was doing, he knew what the objectives of the
22 conspiracy were, and not once did he withdraw from it.

23 Aafia Siddiqui. You've heard this name countless
24 times. She's all over the ransom emails, ladies and gentlemen;
25 Kayla Mueller ransom emails, the James Foley ransom emails,

1 Kayla's handwritten letters to her family, Steven Sotloff's
2 handwritten letters to his family. Multiple hostages testified
3 that The Beatles specifically spoke about Aafia Siddiqui as a
4 way of justifying their treatment of the American and British
5 nationals. The ransom emails are explicit that death was the
6 alternative if their demands were not met.

7 I believe you heard that The Beatles were obsessed with
8 her. Well, guess what? Who talked about the unjust sentence of
9 Aafia Siddiqui when he was interviewed by the FBI? This
10 defendant. Out of all of the individuals that he could have
11 named who were in prison in the United States, he named one,
12 Aafia Siddiqui, rolled off the tip of his tongue. Why? This is
13 why. Because The Beatles were obsessed with her. Elsheikh was
14 a Beatle, and even years later, when he's interviewing with the
15 FBI, he names Aafia Siddiqui as someone who he believed received
16 an unjust sentence.

17 You've heard a lot about Mohammed Emwazi. I'm not
18 going to play the beheading videos. They're in evidence, but
19 out of respect for you and for the public, we're not going to
20 publish them right now, just as we didn't during the trial. But
21 they're available for you to look at if you so choose during
22 your deliberations.

23 This collage is significant because Elsheikh, as you
24 will recall during Special Agent Chiappone's testimony, Elsheikh
25 told the FBI during his March 2018 interviews that he knew that

1 Emwazi was the masked executioner in the U.S. and the UK
2 beheading videos. And he said he knew that in part because he
3 knew what Emwazi looked like with a mask on, and that he had
4 seen him wear a mask before on several occasions.

5 Take a look at these photographs, ladies and gentlemen.
6 How in the world would Elsheikh have known what Emwazi looked
7 like with this type of mask, the balaclava, where you can only
8 see the eyes? Where would Elsheikh have seen Emwazi wear this
9 mask before? These aren't the pandemic masks that we've all
10 been accustomed to wearing now. This was over seven years ago.
11 Were they going on ski trips together as ISIS members in Syria?
12 No, of course not. There are just three possibilities drawing
13 on the inferences -- drawing inferences from the evidence you've
14 received. One, Elsheikh was there at the execution videos; two,
15 he saw Emwazi with the mask on around the hostages; or, three,
16 both. Any of those leads to the same bottom line conclusion,
17 Elsheikh is one of the three Beatles.

18 And to top it off, you also heard that Elsheikh told
19 the FBI that he too had worn a mask before, when discussing
20 Emwazi's mask-wearing on several occasions.

21 Now, ladies and gentlemen, the evidence I just
22 summarized proves beyond a reasonable doubt that Elsheikh is a
23 Beatle, and that's before we even get to the media interviews.
24 All the evidence I've summarized has nothing to do with the
25 media interviews. But given the media admissions, what he told

1 you and the world, we have proved beyond any shadow of a doubt
2 that Elsheikh is, in fact, an ISIS Beatle.

3 You heard during this trial that a common ISIS
4 propaganda mantra is: Don't hear about us, hear from us. And
5 in the first portion of my closing argument, you heard a lot
6 about Elsheikh and why he is unquestionably one of the ISIS
7 Beatles. And now you'll hear from him through his countless
8 on-camera admissions.

9 (Video played in open court.)

10 MR. PAREKH: Ladies and gentlemen, one thing I'll get
11 into in a little more detail later are the details of the
12 conspiracy. This clip right here is emblematic of what a
13 conspiracy is: "Me, Alexe, and Emwazi." Here Elsheikh was
14 telling you himself that he was part of The Beatles ISIS
15 conspiracy. They all shared a common purpose in the detention
16 and torture of all of the hostages.

17 (Video played in open court.)

18 MR. PAREKH: He knows how to inflict pain, and, indeed,
19 you heard throughout this trial that he did inflict pain. He
20 knows how to cause real damage, and the hostages testified that
21 that's exactly what he gave, he and his co-conspirators.

22 Federico Motka testified that he was waterboarded, that
23 he was beaten with a rubber cable for hours. Daniel Rye Ottosen
24 testified that The Beatles hit him 25 times in his ribs on his
25 25th birthday. Nicolas Hénin and Edouard Elias testified that

1 their beatings included all three Beatles.

2 And you heard repeatedly that James Foley,
3 David Haines, Federico Motka, you heard about their reaction to
4 The Beatles. It was pure terror. They were shaking, they were
5 crying. Mock executions, beatings, being ordered to fight each
6 other, broken ribs, dead legs, psychological torment and
7 torture. The Beatles threatened beheadings.

8 (Video played in open court.)

9 MR. PAREKH: It was never published, it wasn't an
10 official video.

11 You heard from two of the hostages that are in the
12 Syrian execution photograph that's shown on the screen right
13 now. Federico Motka and Daniel Rye Ottosen testified that all
14 three Beatles forced them to make signs. They testified that
15 Ringo set up or held the camera while the Syrian man was
16 executed.

17 And you heard from Tyler Treml that this video was
18 indeed never publicly released or available, but yet Elsheikh
19 describes with precision the cards that the five hostages were
20 holding, the fact that they were seated around a semicircle, and
21 that there were photos taken of the hostages holding the cards
22 after the Syrian was shot and killed. So how did Elsheikh know
23 all these details? Because he was there. And you know from the
24 evidence in this trial that he wasn't just present as an idle
25 observer, but he actively participated in this execution.

1 (Video played in open court.)

2 MR. PAREKH: Did you hear how he described with
3 precision the proof-of-life emails? He doesn't say "multiple
4 paragraphs;" he doesn't say "first, second, or third;" he says,
5 "one, two, three." Take a look at all of the families' emails.
6 That's exactly how they're structured. Why? Because he wrote
7 them.

8 You know what else he said in that clip? He said that
9 he took the email address of a brother of one of the family
10 members. Take a look at the James Foley email. What do you see
11 there? Michael Foley. You heard from Michael Foley.
12 Michael Foley is James Foley's brother. That's not coincidence.
13 He was there. He was taking the emails, and he's recounting
14 with precision exactly the structure of the emails and to whom
15 the emails were sent. He's an ISIS Beatle.

16 (Video played in open court.)

17 MR. PAREKH: Yet another example of how you know that
18 this defendant wrote the ransom emails. He specifically uses,
19 "Secure their release." Take a look at some of the emails to
20 the victim families, to the Sotloff family: "Secure Steven's
21 release;" to the Mueller family, "Secure the release of four
22 French citizens;" again to the Mueller family, "No less than
23 5 million Euros will secure Kayla's safe release."

24 Why are these phrases able to roll off the tip of his
25 tongue so easily? Because he wrote the emails. What else is

1 significant about this clip? Take a look at how casually he
2 mentions at the end: "Don't know, maybe a breakdown in
3 negotiation or whatever." He's signaling that when the American
4 families and the other families did not pay the ransom and there
5 was a breakdown, whatever happened to them. They were killed.
6 He knew they were going to be killed. He's writing the emails.
7 He's not getting what he's asked for. He and his
8 co-conspirators are seeking totally unreasonable demands:
9 100 million Euros, secure the release of all Muslim prisoners.
10 These are demands that could never have been met.

11 You heard that from the victim families. And they were
12 very different than the European hostages, and that was for a
13 reason. Because they always planned to kill the American and
14 UK hostages. He's an ISIS Beatle, ladies and gentlemen.

15 (Video played in open court.)

16 MR. PAREKH: Ladies and gentlemen, this is devastating
17 corroboration. You heard from Frida Saide that this
18 proof-of-life video was never released. She testified that she
19 was asked proof-of-life questions, including the name of her
20 childhood cat. Didier Francois testified that he was asked
21 proof-of-life questions, including one about the name of his
22 cat. Out of all of the proof-of-life questions he could have
23 recounted, he specifically selected the very precise one or a
24 similar one that multiple hostages were asked to provide. Why?
25 Because he was there. He was the one asking the hostages the

1 proof-of-life questions. He and his co-conspirators,
2 Mohammed Emwazi and Alexanda Kotey, are the three ISIS Beatles.

3 (Video played in open court.)

4 MR. PAREKH: You've seen this before. Elsheikh is
5 using the precise wording that was mentioned in the James Foley
6 execution email: "He will be executed as a direct result of
7 your transgressions towards us."

8 And then the note on the bottom, Government
9 Exhibit 3-5, you'll recall that that was a script that was found
10 at the prison where the U.S. military did a raid. "The
11 government must stop transgression." Again, why is it that
12 these words are able to roll off the tip of his tongue so
13 easily? Because he's there, he's writing the emails.

14 (Video played in open court.)

15 MR. PAREKH: Ladies and gentlemen, this is devastating
16 corroboration. You've heard from Frida Saide that this
17 proof-of-life video was never released publicly. He's
18 recounting exactly verbatim what is stated in the beginning of
19 this proof-of-life video. Why? Because he was there. And
20 you'll recall the testimony that, in addition to these three
21 women, who else was there? Kayla Mueller.

22 These examples are just one of many granular details
23 that only The Beatles would know and distinctly remember. This
24 evidence clearly shows you that Elsheikh was not only involved
25 in the proof-of-life emails, but, again, he wrote them.

1 (Video played in open court.)

2 MR. PAREKH: Take a look at the indignation that he
3 expresses. He knows he always wore a mask. That's why he's
4 expressing so much surprise. You heard released hostage after
5 released hostage testify that the three Beatles wore full face
6 masks and all they could see were their eyes. That's why they
7 couldn't identify them, because the hostages stated that
8 The Beatles were always careful. They were careful not to
9 leave fingerprints. They wore gloves. They wouldn't touch the
10 letters from the released hostages that were being sent out.

11 And what was the protocol when The Beatles would enter
12 their cell? They had to kneel, they had to face the wall.
13 Don't look at them; otherwise, they would be beaten. And one of
14 The Beatles, or all three of The Beatles, stated that if they
15 did look up, perhaps they would be killed.

16 You heard Daniel Rye Ottosen testify yesterday that he
17 struggled to even describe the mask. You heard that testimony.
18 He was held in captivity for 13 months, and he was so afraid of
19 looking at The Beatles that he couldn't even describe the mask.
20 He said, "I think it was cloth-like but I was quite frankly too
21 afraid to look at them." He made it difficult for the
22 Beatles [sic] to identify them because of the torture and the
23 beatings that they would be subjected to if they looked up.

24 Now, ladies and gentlemen, for the last part of my
25 closing argument, I'm going to transition to the elements of the

1 offenses.

2 So now you know beyond any doubt whatsoever that
3 Elsheikh is one of the ISIS Beatles. So let's discuss the eight
4 charges and the elements, and how all of the evidence you've
5 seen and heard fits into the jury instructions that Judge Ellis
6 will soon give you. As always, as Judge Ellis said, the Court's
7 instructions control. This is merely a suggested road map.

8 So we've charged four conspiracy offenses. Four out of
9 the eight charges involve conspiracy offenses. And here I've
10 listed what the government must prove beyond a reasonable doubt:
11 "An agreement existed between two or more people to pursue a
12 criminal objective; Elsheikh knew the purpose of the agreement;
13 and Elsheikh knowingly joined the agreement intending to further
14 its purpose."

15 What were the criminal objectives of these conspiracy
16 offenses? They're all closely related. To commit
17 hostage-taking resulting in death; to murder U.S. nationals
18 abroad; to provide material support to terrorists resulting in
19 death; and to provide material support to a foreign terrorist
20 organization resulting in death.

21 So Count 1, the charge is conspiracy to take hostages.
22 What have you heard throughout this trial? Well, the evidence
23 has shown that every released hostage testified about how they
24 were initially seized by members of ISIS and then continuously
25 detained by ISIS members, including The Beatles, the three

1 English-speaking guards with British accents. You heard time
2 and time again from those witnesses that The Beatles acted as a
3 team, as a unit, and that they were very friendly with each
4 other. It's clearly an agreement among them.

5 The Beatles were the lifeblood of the hostage
6 conspiracy. They occupied a position of authority and they
7 worked together to accomplish its objectives. And The Beatles
8 were not only the leader captors; they were intimately involved
9 in the ransom negotiations and the threats to kill, injure, or
10 continue to detain the hostages. Every single released hostage
11 testified that The Beatles were the ones collecting email
12 addresses and information for the negotiations and conducting
13 the proof-of-life process.

14 You heard from each of the victims' families or their
15 colleagues about the ransom demands, that the money was in the
16 millions of Euros, or, for the U.S. citizens, political action
17 by the government, the release of Muslim prisoners, including
18 Aafia Siddiqui, and the cessation of coalition military activity
19 in Syria. And you've seen the ransom demands themselves that
20 they explicitly threaten the lives, physical safety, and
21 continued detention of the U.S. hostages if their demands are
22 not met.

23 So, in short, ladies and gentlemen, the evidence is
24 overwhelming that members of ISIS, including The Beatles, of
25 which the defendant is a member, had an agreement to seize and

1 detain U.S. nationals and others, and threaten death, injury, or
2 continued detention of those hostages in order to compel their
3 families and governments to pay monetary ransom, or to engage in
4 or refrain from engaging in certain conduct. That means that
5 the agreement satisfies all of the required elements for a
6 hostage-taking conspiracy.

7 Count 6, "Conspiracy to murder U.S. nationals." There
8 are two ways that I believe you'll hear how the government can
9 prove that there was an agreement to murder U.S. nationals in
10 this case. First, as you'll hear from the Court today, having
11 the intent to kill includes a plan to kill someone if a specific
12 demand is not met. The evidence in this trial showed that from
13 the very beginning, The Beatles threatened death to the hostages
14 if their demands were not complied with.

15 But you also heard repeated testimony that their wrath
16 was particularly focused on the American and British hostages.
17 The ransom emails are explicit that death was an alternative if
18 the demands were not met. And keep in mind, ladies and
19 gentlemen, this is conspiracy to murder U.S. nationals. The
20 charge isn't here that Elsheikh personally murdered the
21 U.S. nationals. It's an agreement. It's not that Elsheikh
22 himself carried out the executions.

23 But the other way you can find the intent to kill is
24 looking closer in time to each hostage's death. The evidence
25 shows that at some point after they were taken hostage,

1 The Beatles decided to kill the American hostages instead of
2 continuing to detain them. You've been told about the videos
3 depicting the executions of Jim Foley and Steven Sotloff, the
4 video showing Peter Kassig's decapitated head, and email showing
5 Kayla Mueller's body. Sometime after, they determined that
6 murdering the American hostages was better for their plans than
7 continuing to detain them or continuing to demand ransom. And
8 at the moment that they and/or other members of ISIS decided
9 that, they formed the agreement to murder the U.S. hostages.

10 And you heard overwhelming direct evidence of that
11 intent expressed throughout this trial. Remember when
12 Marcos Marginedas testified that when he was released in
13 April 2014, one of The Beatles told Jim Foley to touch him
14 because it was as close to freedom as Jim would ever get again?
15 And remember when Nicolas then testified and Edouard Elias
16 testified that all three Beatles made them listen to the words
17 of a parody of "Hotel California" that said that the hostages
18 would never leave and they would end up like Mr. Bigley, who was
19 beheaded? And remember how the ransom email for Kayla Mueller
20 said that it was more beloved for them to put a bullet in the
21 back of her head than to release her for less than their
22 demands? And if the family did not comply - and the family, of
23 course, couldn't comply, as you heard from their testimony -
24 that they would send them photos of Kayla's dead body? Which is
25 exactly what happened here.

1 But perhaps most crystal clear is the email to
2 James Foley's family on August 12th, 2014, that explicitly
3 announced that James Foley would be executed. And notice how
4 that email, like all the others, describes the captors as "we"
5 or "us."

6 So, ladies and gentlemen, the evidence shows well
7 beyond a reasonable doubt that at a minimum, by this point in
8 the hostage's captivity, The Beatles had entered an agreement
9 that they would deliberately murder the U.S. hostages. And note
10 that several emails were sent to the families of the U.S.
11 hostages following James Foley's execution, all from the same
12 exact Safe-mail.net accounts that had been used before.

13 You can infer, members of the jury, that The Beatles
14 were continuing their activities together preparing to execute
15 the U.S. hostages.

16 Now, Count 6 has an additional requirement called an
17 overt act. And that means that at some point after the
18 agreement was formed, at least one of the co-conspirators took a
19 substantial step towards accomplishing the objective of the
20 conspiracy; that is, towards murdering at least one of the
21 U.S. hostages.

22 Members of the jury, you have all the evidence you
23 need, unequivocal examples of such substantial steps. Of
24 course, Mohammed Emwazi actually beheading the American hostages
25 on video; but, even before that, once the agreement was formed,

1 The Beatles continued to detain the hostages for the purpose of
2 killing them. And that is another substantial step towards
3 accomplishing that objective.

4 So, ladies and gentlemen, the government has
5 demonstrated not only that the agreement existed, but that
6 substantial steps to complete the murder were, in fact, carried
7 out by the co-conspirators.

8 Now let's talk about Count 7, the agreement to provide
9 material support to terrorists. Now, you'll actually see, when
10 we get to Count 8, that material support to ISIS includes things
11 like providing personnel. So that's providing, including
12 Elsheikh himself providing himself, to the terrorist
13 organization, for services.

14 So to prove the conspiracy or the agreement charged in
15 Count 7, the government needs to prove that an agreement
16 existed, that a person would provide personnel or services,
17 knowing that their support would be used to carry out the
18 hostage-taking or murder crimes that the government has alleged.

19 And the crimes of hostage-taking and murder that the
20 government has proven over the course of this trial were large
21 undertakings involving a number of actors, including
22 The Beatles. You heard testimony from every one of the released
23 hostages not only about The Beatles, but also about the massive
24 support structure surrounding these crimes. The numerous
25 prisons the hostages were kept in and the local guards who kept

1 watch and did daily ministerial tasks like bringing the hostages
2 food or taking them to the toilet; all of these, ladies and
3 gentlemen, are examples of material support to these crimes.
4 And you can, for example, infer from their participation that
5 the local guards were all part of an agreement to provide the
6 personnel and services, knowing that it would be used for
7 hostage-taking and murder crimes alleged in the indictment, even
8 if they didn't particularly care about the success of the
9 endeavor.

10 So the government has proved beyond a reasonable doubt
11 that there was a wide-ranging scheme of material support to
12 these crimes. And, of course, again, at the heart of this
13 conspiracy of material support were The Beatles, who themselves
14 provided services as the hostage negotiators, the torturers, and
15 the supervisors of these crimes.

16 Now let's go to Count 8. This is the conspiracy to
17 provide material support to ISIS. As I noted, material support
18 or resources includes things like personnel, including the
19 defendant himself, and services to a terrorist organization; in
20 this case, ISIS.

21 The evidence, ladies and gentlemen, for this charge is
22 straightforward and clear-cut. You heard testimony from
23 Professor Hoffman that the Al-Nusra Front and ISIS have been
24 designated terrorist organizations. You then heard testimony
25 from FBI Special Agent John Chiappone that in his interview of

1 the defendant in March 2018, the defendant admitted that he left
2 the United Kingdom in 2012, first joining Al-Nusra and then
3 joined ISIS in 2013. You heard that he acquired weapons for
4 ISIS and that he saw a lot of death while he was there. That's
5 conspiring with others like Kotey and Emwazi and other ISIS
6 fighters to provide services to ISIS as a fighter himself.

7 So the only question left on Count 8, ladies and
8 gentlemen, is whether the defendant knew that ISIS had engaged
9 or was engaging in terrorism. Of course he did, ladies and
10 gentlemen. In fact, this defendant put the terror in terrorism
11 himself. And his exceptionally violent conduct on behalf of
12 ISIS clearly demonstrates that he knew that ISIS was engaging in
13 terrorism. He was engaging in terrorism himself on behalf of
14 the organization.

15 And you heard from Tyler Treml and Professor Hoffman
16 about ISIS's very sophisticated media organization and their
17 highly advanced use of social media and propaganda. ISIS's
18 terrorism was globally publicized, even outside the
19 organization. So there's simply no way, on these facts, that
20 the defendant remained in the dark about ISIS's activities as a
21 terrorist organization.

22 I've just walked you through how the government has
23 proven that these conspiracies existed in the first place. I
24 now am going to touch on the four what we call "substantive
25 counts" of the indictment, and that's the hostage-taking that

1 we've alleged in this case. That's Counts 2 through 5.

2 Now, the law treats conspiracies, which are agreements
3 to commit a crime, and actually committing the crime, as
4 separate offenses. But because The Beatles agreed to commit and
5 then did commit the offenses, much of the evidence I'll describe
6 here will be the same. So let's go to proving the
7 hostage-taking.

8 Well, you know that all four victim families received
9 ransom demands in the form of money or the release of Muslim
10 prisoners or in exchange for Aafia Siddiqui. For these charges,
11 ladies and gentlemen, you actually have three different
12 theories, or separate roads, all of which can lead to guilty, so
13 long as the government proves at least one of them beyond a
14 reasonable doubt.

15 The first way is as a principal, which means that
16 Elsheikh personally committed all of the acts necessary to
17 commit the offense himself. For hostage-taking, that means that
18 Elsheikh seized and detained a specific victim named in the
19 count. As you'll see, we have four separate counts, each
20 relating to a different U.S. victim. "Or continued to detain
21 that person, and did so in order to compel a third party or a
22 government organization to pay a monetary ransom to do a
23 specific act or to refrain from doing a specific act as a
24 condition of that person's release." And the government submits
25 to you that all of the evidence that I've recited says exactly

1 that.

2 As one of The Beatles, Elsheikh personally held the
3 hostages captive and wrote ransom demand emails to the families
4 of the victims demanding money or demanding that the U.S.
5 government do some act like releasing Muslim prisoners or
6 refraining from doing some act like ceasing military operations
7 in Syria.

8 The second way that Elsheikh can be found guilty of the
9 substantive offenses is by what's called "aiding and abetting
10 its commission." This means that although some other person may
11 have personally committed all the acts necessary for the
12 offense, Elsheikh, one, "knew the crime was going to be or was
13 being committed; two, knowingly did some act for the purpose of
14 aiding, commanding, or encouraging the commission of that crime;
15 and, three, did so intending that the crime be committed."

16 So let me give you an example. The person who
17 knowingly and intentionally aids a bank robber by driving him to
18 and from the bank is just as guilty of robbery as the one who
19 actually took the gun into the bank. That's aiding and abetting
20 liability.

21 So likewise here, if you conclude that the government
22 has proved beyond a reasonable doubt that a particular act of
23 hostage-taking was committed by someone else, such as another
24 Beatle, including Mohammed Emwazi, but that Elsheikh knowingly
25 did an act that aided and abetted the hostage-taking, intending

1 that the hostage-taking be committed, that means that Elsheikh
2 is still guilty of committing the hostage-taking offense under
3 this theory of liability.

4 There's also a third theory of liability called
5 "co-conspirator liability." For the sake of time, I'll just
6 skip past this one because I submit to you that the evidence is
7 overwhelming when it comes to the aiding and abetting theory of
8 liability.

9 Now, the last portion that I want to address is the
10 resulting-in-death component of these offenses. Now, as
11 Judge Ellis will instruct you, if you find that the defendant
12 committed the basic offenses charged in Counts 1 through 5, 7,
13 or 8, such as joining the conspiracies to take hostages or to
14 provide material support or committing the substantive
15 hostage-taking, you will have to decide whether the commission
16 of the offense resulted in the death of at least one person
17 identified in that count.

18 The reason I'm addressing the resulting-in-death
19 section at the end is because the analysis for whether you find
20 the offense resulted in the death of a person named in the
21 indictment is all the same. And it's actually very
22 straightforward, I submit to you.

23 As the Court will instruct you, the analysis for
24 resulting in death is called but-for causation, and it's a
25 straightforward question. If the offense had not been

1 committed, would the victim have died? That's it, ladies and
2 gentlemen, cause and effect.

3 And you will see in the Court's instructions that the
4 government does not have to prove that anyone, including the
5 defendant or anyone else, intended the offense to result in
6 death. And you will also see in the instructions that we do not
7 have to prove that the defendant did some specific act that
8 resulted in the victim's death. We don't even have to prove
9 that the victim's death was reasonably foreseeable to the
10 defendant. Instead, we just have to prove cause and effect;
11 would the victim have died if the offense had not been
12 committed.

13 Well, you know, ladies and gentlemen, that the answer
14 here is a resounding "no" across the board. The American
15 citizens, James Foley, Kayla Mueller, Steven Sotloff, and
16 Peter Kassig, as well as UK citizens David Haines, Alan Henning,
17 and Japanese citizens Haruna Yukawa and Kenji Goto, were all
18 killed as a direct result of the offenses committed by
19 The Beatles and their other ISIS co-conspirators. The evidence
20 overwhelmingly establishes those facts.

21 James Foley and Steven Sotloff were beheaded on video
22 as a result of being taken hostage by the Islamic State and
23 The Beatles specifically. If the defendant and his
24 co-conspirators had not engaged in this conspiracy and taken
25 them hostage, Jim and Steven would not have died in August and

1 September of 2014. They would have lived and continued to
2 report on conflict zones around the world.

3 But for the defendant and his co-conspirators,
4 Peter Kassig also would not have been killed in November 2014
5 for the propaganda purposes of the Islamic State. Peter would
6 have lived and continued to run SERA, bringing medical aid and
7 training to war torn regions to help alleviate their suffering.

8 And likewise, the UK and Japanese citizens were all
9 killed by Emwazi in videos that you have in evidence, resulting
10 from The Beatles' conspiracy to provide themselves and their
11 services to ISIS in pursuit of the crimes of hostage-taking and
12 murder. Those too are deaths resulting from the commission of
13 Counts 7 and 8. But remember, we only have to prove that at
14 least one had resulted in the death of a person.

15 And what about Kayla? If Kayla had not been taken
16 hostage by the defendant and his co-conspirators, she would have
17 never been kept in captivity for all that time. She would have
18 never been given to the Sayyafs as a slave, or to al-Baghdadi,
19 and she would have never died in February 2015. She would have
20 lived and continued her calling as a humanitarian aide -- to
21 bring humanitarian aid to those in need.

22 Now, remember that this defendant admitted that he
23 personally extracted an email address from her. Let's talk
24 about the circumstances of her continued captivity. When Kayla
25 was at The Desert Prison, Frida Saide heard the three Beatles

1 all tell Kayla she will be held forever if the ransom demands
2 are not paid. Remember this testimony: There's an email sent
3 even after the July 4th raid, again from the same Safe-mail.net
4 email address and after Kayla is moved to a different prison,
5 where The Beatles are continuing to demand ransom. That's
6 August 1st, 2014. And then you have an email from September 19,
7 2014. She was held as a slave in the Sayyaf residence where she
8 was locked in a room, threatened, raped, and never allowed to
9 communicate with her family. And this email, again, was sent by
10 The Beatles after she had been moved to another prison.

11 What this shows you, ladies and gentlemen, was that the
12 conspiracy was continuing. ISIS was continuing to demand ransom
13 for her release, even while she was being moved around to other
14 prisons. It was all one continuous event where Kayla was not
15 allowed to leave captivity. She was being kept against her
16 will, and she died as a result of being held as a captive.

17 Now, you remember that Lea Mulla testified that they
18 were in a home surrounded by weapons, they were locked in a
19 room, and women who had been kidnapped and made slaves by ISIS
20 were raped, including Kayla Mueller, who she said had been raped
21 by the leader of ISIS, Abu Bakr al-Baghdadi, the then-leader of
22 ISIS. All of this demonstrates the extreme coercion of her
23 captivity by ISIS.

24 Then you heard, ladies and gentlemen, even years later,
25 you heard this defendant defend the ISIS ideology that kept

1 Kayla Mueller as a slave. Listen to what he says.

2 (Video played in open court.)

3 MR. PAREKH: Even years later, ladies and gentlemen,
4 Elsheikh is continuing to defend the practice of slavery. And
5 you know from all the testimony you heard at this trial that
6 Kayla Mueller was held captive and she was held as a slave until
7 her death.

8 Now, what about that claim that she was killed by
9 Jordanian air strike? You may be wondering that. Right? You
10 saw that ISIS Tweet and the press announcement. Ladies and
11 gentlemen, the government submits that Kayla's death in an air
12 strike is just another one of ISIS's propagandistic lies. You
13 heard ISIS and The Beatles repeatedly threaten Kayla's life in
14 their ransom demands. They said it would be more beloved to put
15 a bullet in the back of her head than to release her. They
16 said if their demands were not met, they would send Kayla's
17 family photos of her dead body, and the government submits that
18 they did exactly that.

19 But even setting that aside, ladies and gentlemen, the
20 law does not require you to conclude that ISIS or The Beatles
21 directly killed Kayla for you to find that the hostage-taking
22 offenses charged resulted in her death. Assume this unlikely
23 scenario that she was killed in a Jordanian air strike. First
24 of all, why was she at that home in the first place? She was at
25 that home because ISIS never let her go. So she would have

1 never been killed by this so-called air strike if she was never
2 taken hostage in the first place by this defendant and his
3 co-conspirators. So even in that unlikely scenario, which the
4 government submits is a bunch of baloney, that still would
5 result in Kayla's death from the hostage-taking offense that we
6 described.

7 But take a look at the very first email that Kayla's
8 parents are sent on May 23rd, 2014. They call her a prisoner.
9 And then, when ISIS issues its announcement, what's the title?
10 "Killed an American Female Prisoner." She was always a
11 prisoner. She was never let go, she was never free. She was
12 always held as a captive. And so whatever may have happened to
13 her - and the government submits that she was killed by ISIS -
14 that's obviously for you to decide.

15 But the government submits to you that that's what the
16 evidence showed, that she was killed by ISIS. No matter what
17 alternative theory you believe, her death resulted as a
18 commission of the hostage-taking offenses.

19 This is also significant, ladies and gentlemen. The
20 same exact Safe-mail.net account that's used to communicate with
21 Kayla's family is the one that's used to announce her death to
22 her family. So this notion that The Beatles were not involved,
23 that's not true. The same exact email account is being used to
24 tell her family that she died. Well, how did The Beatles know
25 the day after or a few days after that she was killed in an air

1 strike and where she was located, unless they were following her
2 captivity the whole time.

3 They were referring to her family and sending
4 photographs of Kayla's dead body almost in real time, just a day
5 or two after. Why? Because she was being held all along by
6 ISIS, and The Beatles were fully aware of where she was located.

7 So that brings us to the end, ladies and gentlemen.
8 The deceased victims in this case, including Kayla Mueller,
9 Peter Kassig, Steven Sotloff, and James Foley, as well as the
10 British and Japanese citizens, they were humanitarian aid
11 workers and journalists who were subjected to unjustifiable acts
12 of cruelty. These individuals came to Syria to promote peace
13 and enlightenment in a country torn by war, and to alleviate
14 suffering among those most in need.

15 This defendant, El Shafee Elsheikh, responded with
16 systematic, premeditated, and relentless abuse and torture of
17 the individuals that he and his co-conspirators took hostage,
18 including those who tragically died as a result.

19 What these horrific crimes left behind is a legacy of
20 brutal killings and shattered families. Based on all of the
21 evidence you have seen and heard, we respectfully request that
22 you return a verdict of guilty for each and every count on your
23 verdict form.

24 Thank you very much.

25 THE COURT: All right, ladies and gentlemen, you've

1 been sitting now for roughly an hour and four minutes, or
2 thereabouts. The next argument may take almost that long. Do
3 you want to take a recess now before beginning the other one?

4 All right. We will do that. Pass your books to the
5 right, put them in the usual cubbyholes, and we will recess now
6 until 10:35. Will that give you enough time to have a soft
7 drink? Good. 10:35, and avail yourselves of the snacks.
8 Remember not to discuss the matter among yourselves or with
9 anyone, or undertake any investigation on your own.

10 You may follow the court security officer out.

11 (Jury out at 10:15 a.m.)

12 THE COURT: Court stands in recess until 10:35.

13 (Recess taken at 10:16 a.m.)

14 (Jury in at 10:42 a.m.)

15 THE COURT: Ladies and gentlemen, I hope you found
16 snacks and soft drinks.

17 All right. We'll proceed now to hear closing argument
18 on behalf of the defendant and the government's rebuttal.

19 Ms. Ginsberg, are you ready to make your closing
20 argument on behalf of the defendant?

21 MS. GINSBERG: Yes, thank you, Your Honor.

22 THE COURT: You may proceed.

23 MS. GINSBERG: Members of the jury, I want to thank you
24 again, as Mr. Parekh did, for your service these last few weeks.
25 We know we've asked you to make a lot of personal sacrifice to

1 be here, and you, unlike many other juries, have been asked to
2 listen to some very horrific evidence. And we appreciate the
3 toll that that, I'm sure, has taken on you, as it's taken on
4 every single person in this courtroom.

5 As Mr. MacMahon told you at the beginning of this
6 trial, the right of an accused to a trial by jury is one of the
7 most fundamental freedoms enshrined in our Constitution. It's
8 one of the rights that FBI Agents Dan Story and Brian Driscoll
9 risked their lives by going to Syria to preserve. And as
10 Mr. MacMahon also told you at the beginning to this trial,
11 juries serve as a bulwark to protect the accused, because no
12 person in our country can be convicted of a crime - and that's
13 any crime, no matter how horrific - unless the government proves
14 his guilt beyond a reasonable doubt.

15 Mr. Elsheikh is one of those persons. He's presumed to
16 be innocent. And now it falls to you as jurors to decide
17 whether the government has met its burden.

18 It's also impossible to go on without first
19 acknowledging the brutal torture and deaths of James Foley,
20 Steven Sotloff, Peter Kassig, and Kayla Mueller, and of
21 David Haines, Alan Henning, and John Cantlie. They were
22 loathsome, unforgivable, and senseless acts.

23 The same has to be said for the former hostages who
24 suffered the same brutal mistreatment, but were fortunate enough
25 to survive. Each of the hostages risked or lost his or her life

1 to bring the world news about the war in Syria, or to provide
2 aid to victims of Bashar al-Assad's war on his own people.
3 These extraordinary men and women, and the members of their
4 families, were and are among the bravest people any of us may
5 ever have the privilege to know.

6 None of what happened to the hostages is in dispute.
7 The question you must decide, however, is whether Mr. Elsheikh,
8 the person accused in this case, bears responsibility for these
9 acts. And while you have heard that he voluntarily became a
10 member of ISIS and heard evidence about his statements to the
11 media, we submit that the evidence has not shown beyond a
12 reasonable doubt that Mr. Elsheikh was involved in the
13 kidnappings, torture, or deaths of any of the hostages.

14 Now, Mr. Parekh has told you why the government
15 believes that they have. I would like to make some -- put some
16 perspective on those arguments.

17 First, none -- Mr. Elsheikh was not identified in this
18 courtroom by any of the former hostages. Let me say it again.
19 Mr. Elsheikh has never -- was never identified at this trial by
20 any of the former hostages. That is what people would probably
21 call the white elephant in the room. No one who wasn't a law
22 enforcement officer, who already knew Mr. Elsheikh's identity,
23 identified Mr. Elsheikh, except for Omer Kuzu, who is hoping
24 that the government will help him reduce what he expects to be a
25 20-year sentence in American prison.

1 Mr. Elsheikh went to Syria in 2012 to fight against the
2 Assad regime. He was captured fleeing from Syria by the Syrian
3 Democratic Forces, known as the SDF, in January of 2018. ISIS
4 didn't exist when he went to Syria. Mr. Elsheikh admitted,
5 however, that he did become a member of ISIS. And however
6 unacceptable you may believe that to be, that is not the
7 majority of the crimes that he is charged with in this case.

8 You may find him guilty of providing material support
9 to a terrorist organization, which is the first part of Count 8
10 in the indictment, but to hold him responsible for the deaths
11 charged in Count 8 and the remaining seven counts of the
12 indictment, you must find that he was a member of The Beatles.
13 Mr. Parekh tried very hard to convince you that he was. We
14 submit that you cannot do that based upon any identification of
15 Mr. Elsheikh that has been made in this courtroom or by the
16 overwhelming evidence that was presented during this trial.

17 You've heard evidence from Agent Chiappone that
18 Mr. Elsheikh admitted his involvement in ISIS during his FBI
19 interview that occurred two months after he was captured by the
20 SDF. Through all of 2018, he made no admissions regarding any
21 involvement in the hostage-taking scheme, either to the FBI or
22 during any of the seven media interviews that were played to
23 you, um, by the government that occurred in 2018.

24 You also heard the reason that changed in 2019 was so
25 that he could avoid being sent to Iraq for a summary trial and

1 execution. It wasn't until Mr. Elsheikh had been held as a
2 prisoner of the SDF for a year and a half, which is longer than
3 some of the hostages in this case were held, and was facing the
4 real threat of being sent to Iraq for a summary trial and
5 execution that he implicated himself in the hostage-taking
6 scheme, by telling reporters things that he could have learned
7 in ways that did not mean that he had to be present or had to be
8 a member of The Beatles.

9 Now, as hard as the government tried, it has not proven
10 that Mr. Elsheikh was one of The Beatles. Former hostages sat
11 20 -- 10, maybe 20 feet from Mr. Elsheikh in this courtroom.
12 They looked straight at him. Not one of the four prosecutors in
13 this case asked any of the former hostages to describe any of
14 The Beatles' physical attributes.

15 We heard a lot about the masks that they wore. We
16 heard that they tried to conceal their identities. But after
17 months and even years of captivity with The Beatles, you didn't
18 hear any of the former hostages describe any physical attribute
19 or attribute of a person's demeanor that could identify
20 Mr. Elsheikh. Not a single hostage was asked by the government
21 to describe his or her captor's physical appearance, even if
22 only as compared to the other Beatles or compared to the height
23 and weight of any of the hostages.

24 None of the hostages was asked questions about
25 The Beatles' height, their body size, their weight, their skin

1 tone, the size of their hands, the size of their feet, the way
2 they walked, all things that they had more than ample
3 opportunity to observe. The former hostages were never asked
4 about any aspect of The Beatles' demeanor, and whether it
5 matched anything about Mr. Elsheikh, even after they watched
6 some of the media clips that they actually saw in this
7 courtroom.

8 Mr. Ottosen described the person he called Ringo at the
9 Syrian execution. It was the only time that the hostages
10 described not being blindfolded. He said he stood meters away
11 from the hostages holding a camera, closer or the same distance
12 between each of them in this courtroom and Mr. Elsheikh.

13 Mr. Motka also testified that the hostages' blindfolds
14 were removed at the Syrian execution. They all saw that
15 Mr. Emwazi wore black trousers and long black tops. Mr. Motka
16 testified that Ringo was holding a camera during the Syrian
17 execution, standing four meters away from him.

18 Several of the hostages described riding in cars with
19 The Beatles, yet none of them was asked anything about
20 Mr. Elsheikh's physical appearance and whether it resembled the
21 person that he described that either he or Mr. Motka or
22 Mr. Ottosen described as Ringo.

23 Several of the hostages, including Mr. Ottosen, said
24 that The Beatles sometimes wore gloves. The only hostages who
25 said that The Beatles wore gloves were the hostages who were

1 questioned by Mr. Parekh.

2 Would you please display Government's Exhibit 1-24E,
3 25C, 27B, and 29E.

4 In the most public and brutal acts engaged in by
5 Mr. Emwazi, Mr. Emwazi did not wear gloves.

6 Another of the hostages also testified that they
7 overheard their captors talking out of their presence.

8 Mr. Motka testified that during the early part of his captivity
9 The Beatles joked with each other and engaged with the hostages.
10 He said The Beatles told them some things about their personal
11 lives but that things changed by the time they arrived at
12 The Riverside Prison.

13 Now, Mr. Motka did testify that he heard the person he
14 identified as Ringo say he was outside a pub at a protest and
15 got into an altercation with the EDL. Both Mr. Kotey and
16 Mr. Elsheikh were at that demonstration. Police
17 Constable Barry Goodman described Mr. Kotey's demeanor at that
18 demonstration. He testified when he was arrested, Mr. Kotey's
19 demeanor was like someone in a street gang, antagonistic and
20 calling people racists. Mr. Elsheikh, on the other hand,
21 prepared a written statement denying his involvement.

22 None of the former hostages was asked to describe the
23 discussions they heard The Beatles having about their lives that
24 could be used in any way to identify Mr. Elsheikh. When
25 discussing whether the government had proved that Mr. Elsheikh

1 was one of The Beatles, I hope you'll ask yourselves why. I
2 submit the reason is because anything that they heard would not
3 have identified Mr. Elsheikh.

4 This is especially true because the hostages themselves
5 testified that they spoke and talked amongst themselves about
6 The Beatles' personal characteristics. The hostages had a
7 number of other opportunities to observe The Beatles and to
8 identify Mr. Elsheikh. The hostages were able to observe other
9 people being tortured by guards in the corridor outside the room
10 where they were being held by looking through the space under
11 the door or when being taken to the toilet. They also testified
12 they heard The Beatles in the corridors.

13 They rode in vehicles with them, at least during one of
14 the prison transfers and prior to several of the hostages being
15 released. Even though they wore masks, the hostages had --
16 certainly had opportunities to see and hear their captors.

17 Most of the hostages testified that at The Mansion
18 Prison, The Beatles were staying in the room which was called
19 The Tearoom by one of the witnesses, between the male and the
20 female hostages. One of the hostages said that he heard
21 The Beatles using a computer. If they could hear a
22 hostage [sic] using a computer, they certainly would have
23 overheard the hostage -- The Beatles talking with each other.
24 And anything they overheard them saying would have been
25 information that could have been used to help identify who their

1 captors were. They were not asked by the government about what
2 they did hear, and that's because it did not describe
3 Mr. Elsheikh. If it had, you can be certain you would have
4 heard that question answered by one of the hostages.

5 There was also no forensic evidence linking
6 Mr. Elsheikh to any of the locations where the hostages were
7 held. The raid on Abu Sayyaf's house in May of 2015 produced a
8 wealth of evidence that was possessed by members of the ISIS
9 leadership. I think you'll recall that Abu Sayyaf was described
10 by Agent Driscoll as part of the ISIS leadership.

11 Would you display, please, Government's Exhibit 20-1
12 and 20-2.

13 These are the computers, electronic devices, telephones
14 that were seized by the FBI from Abu Sayyaf's home. If
15 Abu Sayyaf was in a leadership role and if Mr. Elsheikh was also
16 in a leadership role, as the government would have you believe,
17 and as Mr. Kuzu attempted to convince you was the case, would
18 there not have been some communication between Abu Sayyaf and
19 Mr. Elsheikh found on one, even one of the computers or
20 telephones found at Abu Sayyaf's home?

21 I think you've all seen enough police shows to know
22 that the FBI would have examined every single device that was
23 seized from that residence, and if they found even a single
24 communication with Mr. Elsheikh on any of the computers or
25 phones, you would have heard about that testimony in this trial.

1 The same is true for the raid on July 4th, 2014, raid
2 at The Desert Prison described by both Mr. Hénin and Mr. Ottosen
3 as the final prison where they were held before being released.
4 Agent Story led the FBI raid to The Desert Prison. The evidence
5 that was recovered was undoubtedly forensically examined, even
6 if, as Agent Story testified, the purpose of the raid was not to
7 conduct a forensic investigation.

8 Several of the hostages, including Mr. Elias, testified
9 that The Beatles were often present at The Desert Prison. They
10 found weapons, radios, cuffs, iron restraints, two telephones at
11 that location. No evidence linked Mr. Elsheikh to the prison,
12 not a fingerprint, not a scrap of DNA, not a hair from his head
13 was discovered in the prison or the two adjacent buildings at
14 the site of the raid. Even though the purpose of the raid was
15 not for a forensic investigation, it is impossible to believe
16 that the evidence that they did seize was not forensically
17 examined.

18 Mr. Kuzu would have you believe that Mr. Elsheikh was
19 part of the ISIS aristocracy, the term that he admitted he came
20 up with for the first time during this trial, a term I'm certain
21 he thought would please the government. He met with the
22 government four or five times to prepare for his grand jury and
23 trial testimony. He was asked to -- he was asked each time to
24 describe his interactions with Mr. Elsheikh. He never told the
25 government that he saw Mr. Elsheikh with a Glock during any of

1 his four or five prep sessions before he testified under oath
2 before the grand jury.

3 Mr. Kuzu knows that the government, not the judge in
4 his case, but that it is the government that will decide whether
5 he was telling the truth at this trial, and whether he deserves
6 a reduction from his 20-year sentence.

7 Mr. Kuzu admitted watching ISIS media propaganda, and
8 specifically admitted watching the film -- the video, "Flames of
9 War," which you've seen parts of. But he wouldn't answer
10 Mr. MacMahon's question, when he was asked whether he enjoyed
11 it. But he also didn't go to Syria and join ISIS until after he
12 had watched those videos. I ask you, is that a person who can
13 be believed?

14 Now, it was very important to the government that all
15 of The Beatles be present at each of the incidents with the
16 hostages, and the reason for that is that none of the hostages
17 were able to identify Mr. Elsheikh. How many times did
18 Mr. Parekh ask his witnesses if all three Beatles were always
19 present, and whether The Beatles always wore masks and always
20 wore gloves? You heard from at least three of the hostages, who
21 were brutally tortured -- that were brutally tortured by other
22 ISIS fighters and guards, who wore masks, guards who came into
23 contact with these hostages before they ever were confronted
24 with The Beatles. The early days of a number of the hostages'
25 captivity were described as being filled with gruesome forms of

1 torture, and that torture was inflicted before any of those --
2 any of those individuals ever came in contact with The Beatles.

3 Mr. Hénin testified that there were two and sometimes
4 three Beatles of The Beatles present. Mr. Motka testified that
5 The Beatles switched who came to ask for email addresses, that
6 they were dressed in dark green or black. Other hostages
7 testified that they wore green. The Beatles, they said they
8 wore gloves when touching something.

9 Mr. Hénin described what he called the Da'wah preaching
10 session that focused on, he said, predominantly The Beatles'
11 justification for their capture. He said an eye for an eye,
12 attacks on tourists. That is the exact same way Mr. Kotey
13 described collateral damage in one of the joint media
14 interviews.

15 He also described an incident when the only -- only one
16 Beatle he identified as George came into their cells and
17 punished him for his prior escape attempts. I submit to you
18 that it is not possible, from the testimony you heard during
19 this trial, to determine whether the hostages were talking about
20 the same person when they described one of The Beatles as Ringo
21 and one of The Beatles as George.

22 The government needed -- for that very reason, the
23 government needed all three Beatles to be present, because no
24 one could agree on which Beatle was Ringo, which Beatle was
25 George, and no one could identify Mr. Elsheikh as one of

1 The Beatles.

2 Ms. Chavez testified that The Beatles covered their
3 faces. She said they wore black tunics and black pants, but she
4 described nothing else about their appearances. She testified
5 that The Beatles started to come to The River House after the
6 first three or four days, and she was one of the witnesses who
7 testified that they stayed in the room in between the male and
8 female hostages. She said she could hear them talking to the
9 male hostages. She could hear them preaching to the men. They
10 all had opportunities to learn information that they could use
11 to describe The Beatles.

12 Ms. Chavez also testified that it was a person she knew
13 as Abu Ahmed, who she also identified as Mr. Emwazi, as the
14 Beatle who asked the women for their email addresses and
15 proof-of-life questions. She also testified that all of
16 The Beatles talked about Aafia Siddiqui. She never described
17 any of them as wearing gloves.

18 Frida Saide also testified that The Beatles moved in to
19 that room between the men and the women hostages. She also
20 heard The Beatles talking with the male prisoners, but she was
21 never asked to describe anything that distinguished their voices
22 or anything about their appearance.

23 Mr. Elias didn't see The Beatles until he moved -- he
24 was moved into the Sheikh Najjar prison. He testified that
25 The Beatles lived in that room when they were at The Riverside

1 Prison. He said he heard them working on computers. If he was
2 able to hear the sound of the computers, he must have been able
3 to hear them talking. The only reason not to ask him what he
4 heard is that none of The Beatles could have been identified as
5 Mr. Elsheikh.

6 Mr. Elias also testified that he saw shadows of their
7 faces. Ask yourselves why he wasn't asked if he could identify
8 Mr. Elsheikh or describe any of the features he observed on
9 those Beatles.

10 All of the released hostages were taken into that small
11 room to make proof-of-life videos. They were within feet of
12 each of The Beatles. Again, ask yourselves why were they not
13 asked to describe any of the features that could be used to
14 identify Mr. Elsheikh as one of them. This can be the only
15 reason why it was so important that Mr. Elias and the other
16 hostages testified that there were always three Beatles present.

17 Mr. Elsheikh admitted his involvement with ISIS. He
18 didn't attempt to hide that when he was interviewed by the FBI.
19 Mr. Hoffman, the government's terrorism expert, told you that
20 the uprising against the Assad regime caused a horrific
21 humanitarian crisis that aid workers and journalists from around
22 the world responded to.

23 Mr. Gibbs also told you in his opening statement that
24 ISIS fought against the Assad regime. You know from the
25 Telegram chats on Khalid Elsheikh's phone that as a member of

1 ISIS, Mr. Elsheikh also fought against Division 17 of the Assad
2 regime. Khalid Elsheikh received the "Rambo" photo of
3 Mr. Elsheikh on July 12th, 2014, and photos from a Division 17
4 battle on July 25th, 2014.

5 Mr. Elsheikh was involved in his fight against the
6 Assad regime in the months immediately prior to the first
7 execution. It is for you to decide whether someone who was a
8 person who was engaged as an ISIS fighter was also somebody who
9 was preparing hostage -- involved in hostage negotiations and
10 preparing for hostage executions at the same time he was busy in
11 a battle with the Assad regime.

12 Now, Mr. Elsheikh and Mr. Kotey both gave fake names
13 and spoke only in Arabic when they were captured in January of
14 2018. But once Mr. Elsheikh's identity was discovered, he
15 immediately identified Mr. El Kotey [sic] rather than conceal
16 the identity, as he might -- Mr. Kotey's identity, as he might
17 have done as a co-conspirator.

18 When he was interviewed by Agent Chiappone in March of
19 2014, it was at a time when it was still early in his SDF
20 custody. He had at that point only been in prison for a period
21 of about two months. The interview was conducted in an SDF
22 prison, an interpreter -- an FBI interpreter, Agent Chiappone
23 testified, was present for the interview so that the SDF
24 guard -- one of his SDF guards would know what Mr. Elsheikh had
25 said.

1 He admitted to training in firearms in the British
2 cadets. He didn't hide -- he didn't attempt to hide his
3 association with the cadets. And, in fact, you heard in one of
4 the interviews, both Mr. Elsheikh and Mr. Kotey admitted that
5 they had been members of the British Army Cadets.

6 Mr. Elsheikh did know and was friends with Mr. Emwazi
7 and Mr. Kotey. He described in some detail the basis of their
8 friendships. He told the agent that Mr. Emwazi and Mr. Kotey
9 entered Syria together two months after he did, and that he knew
10 Mr. Emwazi from a mosque in West London.

11 Mr. Elsheikh certainly could have learned everything he
12 said about the hostages during the 2019 media interviews from
13 his friends, Mr. Kotey or his friend Mr. Emwazi. He started as
14 a fighter and later took part in ISIS operations. He went on
15 missions with Mr. Emwazi and Mr. Kotey, as Mr. Parekh said. He
16 admitted that he worked under an ISIS member who took part in
17 other, um, ISIS attacks. He admitted having every reason to
18 know and trust the information that he received from both
19 Mr. Kotey and Mr. Emwazi.

20 During the media -- during Mr. Elsheikh's FBI
21 interview, Agent Chiappone also testified about the media
22 interviews. He testified that Mr. Kotey was in custody for
23 about two months before the first media interview. Several of
24 the interviews occurred in March, the same month as the FBI
25 interview, and lasted until approximately August of 2018.

1 His next interview was not until May or June of 2019,
2 eight or nine months after the 2018 interviews. Agent Chiappone
3 testified that after his March 2018 interview, he never saw
4 Mr. Elsheikh in Syria again. Ask yourselves what could have
5 happened to Mr. Elsheikh during those eight or nine months in
6 SDF custody, a prison in an SDF prison. You only have to look
7 at his appearance in the 2019 CNN interview to have any idea
8 about what may have happened.

9 And ask yourselves, why did -- of all of the
10 interviews, the clips of interviews that the government showed
11 you, why did they not show you any part of that CNN interview?
12 And the only reason can be is that they did not want you to see
13 the condition that Mr. Elsheikh was in when he participated in
14 the interview that was the first time that he ever, ever
15 admitted any involvement with the hostages.

16 By the time of Mr. Langan's interview, which was a
17 month -- approximately a month later, Mr. Elsheikh had been in
18 SDF custody for a year and a half, and he had committed himself,
19 during the prior CNN interview, to admitting that he was
20 involved with the hostages.

21 Could you please play Government Exhibit 27-7, which is
22 the BBC interview of Mr. Elsheikh and Mr. Kotey in 2018.

23 (Video played in open court.)

24 MS. GINSBERG: You can see in 2018 what their physical
25 appearances looked like, what their attitudes were, what their

1 demeanors were. This was an interview that happened shortly
2 after Mr. Elsheikh was taken into SDF custody. He was engaged
3 with the interviewer. He wasn't afraid to talk about his
4 participation in the cadets. He wasn't hiding from any of the
5 interviewer's questions.

6 Would you play Defendant's Exhibit 9, which is the
7 CNN -- clip from the CNN interview in June of 2019.

8 (Video played in open court.)

9 MS. GINSBERG: The government didn't show you this
10 interview. They did not want you to see the condition that
11 Mr. Elsheikh was in in June of 2019. Mr. Elsheikh looked like a
12 completely different person. He was depleted. He was, in this
13 video, a broken man. And he's asked by the CNN interview, what
14 has changed? And what had changed were two things.
15 Mr. Elsheikh had been in SDF prison for a year and a half, run
16 by a paramilitary force in a conflict region, one of whose major
17 purposes was battling ISIS. And what else had changed was that
18 recently, as the interviewer said, French hostages had been sent
19 by the SDF to Iraq, and those hostages had been executed.

20 And, in response, Mr. Elsheikh says, "Enough is enough.
21 I want this" -- "I just want this to be over. At this point I
22 have to do something to help myself in the situation I'm in."

23 And what was the situation he was in? He was in a
24 prison with -- in the custody of the SDF regime that you heard
25 had total control over what would happen to him, and you heard

1 the interviewer say, "People will hear you say that you were
2 doing this for your own self-preservation, that you know the
3 French nationals have been sentenced to death in Iraq."

4 Ladies and gentlemen, that is exactly what happened.
5 And Sean Langan said the same thing in a clip of his interview
6 taped -- videotaped testimony. He testified that he told
7 Mr. Elsheikh, "I'll tell you what happened to them. They got
8 death by hanging after a 10-minute trial." And he said he hoped
9 to convince Mr. Elsheikh to admit his involvement with the
10 hostages by telling him that it might help him go to England or
11 the United States and get a fair trial.

12 You have the clips and the transcripts from
13 Mr. Langan's interview. They're Defense Exhibits 2, 3, 5, and
14 11. Watch them again, read the transcripts of the interviews.
15 Mr. Elsheikh says in one of those interviews, "A confession
16 maybe would even speed up the process of going to America."

17 And both of the DoD witnesses, George Smith and
18 Jason Richard, the agents who performed the biometric
19 enrollments that identified Mr. Elsheikh and Mr. Kotey, they
20 both testified that the SDF had complete, complete discretion
21 about what happened to the detainees, and that they could
22 transfer them to the custody of another government.

23 And after Mr. Elsheikh's interview with Mr. Langan, he
24 was resigned to a Western prosecution to avoid being sentenced
25 and executed in Iraq. And that is evident in his subsequent

1 videos and in the admissions he makes regarding his knowledge of
2 the hostages. And he became at that point committed to
3 repeating those admissions in the hopes of being sent to the
4 United States for what he thought would be a fair trial.

5 Now, there were also other sources of information for
6 the statements that Mr. Elsheikh made in his media interviews.
7 Some of the things he said didn't require him to know anything
8 about the hostages. For example, he admitted his role with
9 The Beatles began when there were only two hostages. He could
10 have said his role began at any point with the hostages.

11 He collected -- he said he collected emails,
12 proof-of-life letters, and drove released hostages on the first
13 leg when they were released. This is all information about
14 things that happened to the hostages that was well-known to the
15 public by 2019.

16 The phrases highlighted by Mr. Parekh that Mr. Elsheikh
17 used during the media interviews were common words like
18 "please," that were used by Mr. Elsheikh five and six years
19 after the emails he compared them to were sent. Ask yourself,
20 does anybody who has lived through a time in a war zone and has
21 spent a year and a half in a foreign country's prison remember
22 the exact words that he could have used in an email that was
23 sent five or six years ago?

24 By the time of the 2019 interviews, there was a lot of
25 other information about the hostages that was publicly

1 available. The hostage videos had been seen widely around the
2 world. Mr. Treml testified that the song
3 "Osama bin Laden" [sic] was publicly available. He himself was
4 aware from the public media.

5 Bruce Hoffman testified that Ms. Siddiqui's 86-year
6 sentence was a *cause célèbre*. Mr. Hoffman also testified that
7 ISIS used its media operations to claim credit for its military
8 successes, and used as an example the battle with Division 17
9 and said that some -- that the information was public about the
10 Assad regime's fighters being crucified and nailed to telephone
11 poles, and that that information was also publicized by
12 Al-Hayat, one of ISIS's media entities.

13 Mr. Ottosen testified that he -- um, he and
14 Mr. Francois participated in an HBO documentary called "The
15 James Foley Story." And Mr. Francois also told you that he was
16 part of that documentary. That documentary was released on
17 November 30th, 2016. Mr. Ottosen also wrote a book called, "The
18 ISIS Hostage: One Man's True Story of 13 Months in Captivity,"
19 that was published in Danish in 2015 and was also published in
20 English.

21 Mr. Ottosen testified that the HBO documentary he made
22 with Mr. Francois, and his book, contained a detailed accounting
23 of the hostage's time in captivity, and included a lot of the
24 information that he testified about during this trial. That
25 would certainly have included descriptions of their worst

1 punishments, the deadly punishment, the use of stress positions,
2 and information about James Foley's unusual bravery demonstrated
3 by his willingness to ask for additional food for the hostages.

4 The HBO documentary also -- and Mr. Ottosen's book
5 would have also named all of the released hostages, information
6 that the government would have you believe only a Beatle would
7 have known. And information about the times he saw
8 Kayla Mueller and the fact that Kayla Mueller was left alone in
9 a room would almost certainly have been included in either the
10 documentary or the book. Mr. Elsheikh could easily have learned
11 about all of this information from his close association with
12 Mr. Emwazi and Mr. Kotey before he was captured and from the
13 time he spent in captivity with Mr. Kotey until he was released
14 to the American government.

15 Now, the government would have you believe, because
16 these men were friends, were described by Mr. Kuzu as "a duo" -
17 Mr. Kotey and he were described as a duo - that that means that
18 Mr. Elsheikh must have agreed with and, in fact, participated in
19 some of the worst activities that the other two individuals, um,
20 were engaged in.

21 Now, I'm certain each of you knows of a family member
22 or a friend who has had someone who they care about who has
23 either been involved in something they didn't approve of, may
24 have been convicted of a crime, may have been involved with
25 drugs, may have, in fact, hurt other people. But I'm sure you

1 have seen in your own lives --

2 MR. FITZPATRICK: Objection, Your Honor.

3 THE COURT: Put on the earphones.

4 (BENCH CONFERENCE ON THE RECORD.)

5 THE COURT: Can you hear me, Mr. Fitzpatrick?

6 MR. FITZPATRICK: Yes, Your Honor.

7 THE COURT: What's your objection?

8 MR. FITZPATRICK: Your Honor, this is a golden rule
9 type of argument. She's asking the jury to put themselves in
10 the position of the parties. That's not appropriate.

11 THE COURT: All right. Ms. Ginsberg?

12 MS. GINSBERG: Your Honor, I'm asking them to use their
13 common experience as --

14 THE COURT: Yes, but you argued the golden rule, so you
15 need to abandon that. In other words, you're using, well, how
16 would you feel, or how would you react, what would you think.
17 That's the golden rule that you may not use. But you may argue
18 what your position is and why you think it's reasonable.

19 MS. GINSBERG: Thank you, Your Honor. I understand.

20 THE COURT: Well, I'm not sure I understood fully what
21 you wanted to argue. Maybe there's more --

22 MS. GINSBERG: I'm arguing that people in their
23 experience have known other people who have condemned or not
24 approved of the acts of people they loved, but never stopped
25 loving them and never abandoned them.

1 THE COURT: All right. What you could say,
2 Ms. Ginsberg, is, instead of saying, "How would you feel this,
3 that, and the other," you could say that, "It's true that people
4 continue to love people that they know have engaged in
5 bad"...that sort of thing. But not quite in the golden rule
6 way.

7 But I'm not precluding you from making the essential
8 argument. Do you understand what I'm saying?

9 MS. GINSBERG: Yes, I do. Thank you.

10 (END BENCH CONFERENCE.)

11 THE COURT: You may proceed, within the Court's
12 direction.

13 MS. GINSBERG: Certainly in your personal experience
14 you have heard --

15 THE COURT: You're doing it -- not in personal
16 experience.

17 MS. GINSBERG: It is reasonable to assume that there
18 are individuals who have had people who they love do things that
19 they do not approve of, that, in fact, have caused a great deal
20 of harm to other people, but that those individuals do not
21 abandon or stop loving the people who do those acts. And I
22 would submit that what you heard described about Mr. Elsheikh's
23 relationship and friendship with Mr. Kotey and with Mr. Emwazi
24 is just that type of relationship, and does not by itself mean
25 that he, in any way, condoned or participated in the conduct

1 that was -- that he knew about and received information about
2 from either one or both of those two individuals.

3 And there was plenty -- Mr. Elsheikh had plenty of
4 opportunity to learn this information from Mr. Kotey while they
5 were -- before they were captured in 2018, when they were held
6 together -- when he was held together with Mr. Kotey in the --
7 in SDF custody. And you know that he was held with Mr. Kotey
8 because we saw him with Mr. Kotey, um, in the 2018 interviews.

9 He could also have learned details about the Syrian
10 operation from the ISIS -- the Syrian execution from the ISIS
11 media operation. In fact, the email that was sent to
12 Mr. Ottosen's family through Jens Serup with the Gulf-up.com
13 link to the video and stills of the Syrian execution with the
14 five hostages holding the signs was available on one of the
15 prominent file-sharing sites used by ISIS. And the site -- we
16 know that because the link, the Gulf-up.com link, was sent to
17 Mr. Ottosen's family so that they could view those, um, videos
18 and still -- the video and stills.

19 The government also just showed you a clip of the three
20 MS -- MSF -- the three women who were held in captivity in
21 the -- with their heads covered in what looked like burkas, and
22 Ms. Saide was heard saying, "Please, please." The clip that the
23 government played for you with Mr. Elsheikh repeating the words
24 "please, please," was in response to questions he was not being
25 asked about the Doctors Without Borders hostages, but was a

1 phrase he used in response to an answer about one of the male
2 hostages.

3 The government also played a clip where Mr. Elsheikh
4 used the words "transgress" or "transgression," in an attempt to
5 link it to an email sent to Mr. Kassig's family, and in the
6 Foley -- the emails sent to the Foleys. "Transgress" and
7 "transgressions" are words that you can find used in ISIS
8 publications, in the ISIS publication *Dabiq*, where the words
9 appear in Government's -- Government's Exhibit 1-35, 1-36, 1-37,
10 1-38, and 1-40, five separate issues of the *Dabiq* publication
11 that were introduced to you by the government.

12 And in Government Exhibit 1-40, you also find the term
13 "an eye for an eye," which was a term that's used frequently in
14 public discourse, but is also used and also appeared in
15 Exhibit 1-40, and was a phrase that was used in one of the
16 emails sent to Mr. Kassig's family.

17 Now, I want to speak a little bit about the jury
18 instructions. In order to find Mr. Elsheikh guilty of Counts 1
19 through 7, you must find that the government has proven beyond a
20 reasonable doubt that he was a member of The Beatles. I submit
21 to you that the government has not met that burden.

22 If you do not find Mr. Elsheikh was a member of
23 The Beatles, you must find him not guilty of Counts 1 through 7.

24 If you find Mr. Elsheikh joined ISIS or provided
25 material support to the ISIS conspiracy, you may find him guilty

1 of Count 8. But Count 8 also requires that you determine
2 whether Mr. Elsheikh's participation in ISIS was the but-for
3 cause of the four American hostages' death.

4 The judge will instruct you if you find the defendant
5 is guilty of conspiring to provide material support or resources
6 to terrorists, you must determine whether the government has
7 proved beyond a reasonable doubt that the victims' death
8 resulted from the commission of the offense. The offense
9 charged in Count 8 of the indictment is conspiring to provide
10 material support to ISIS, not to the separate hostage-taking
11 conspiracy.

12 In other words, you must find, in order to convict
13 Mr. Elsheikh of the resulting-in-death portion of Count 8, that
14 the government has proven beyond a reasonable doubt that
15 Mr. Elsheikh's specific material support of ISIS, either as an
16 ISIS fighter or someone who worked in the IT department,
17 resulted in the deaths of the American hostages, if you don't
18 also find that he was one of The Beatles.

19 (Brief pause.)

20 THE COURT: Anything further?

21 MS. GINSBERG: Just briefly, Your Honor.

22 THE COURT: All right. There was a long pause there.

23 MS. GINSBERG: Yes, I was considering. Thank you.

24 When you're deciding whether Mr. Elsheikh's statements
25 to the media are proof beyond a reasonable doubt that he was a

1 member of The Beatles, you must also decide whether those
2 statements were voluntary. Judge Ellis will instruct you
3 regarding the voluntariness of his statements and the weight
4 that the statements should be given.

5 You only need watch Mr. Elsheikh's 2019 media
6 interviews to determine his physical and mental condition at the
7 time that he made any of the admissions that he was involved
8 with the hostages. The interview was given shortly after a
9 number of the French hostage -- French ISIS fighters had been
10 sent to Iraq and been executed and after Mr. Elsheikh's
11 imprisonment with the SDF.

12 Mr. Langan's videotaped testimony could also not be
13 more clear. We submit that the government has not proven that
14 Mr. Elsheikh was a part of the conspiracy to kidnap or kill
15 hostages in Syria, and we ask you find him not guilty of all of
16 the charges that require a finding that his conduct, his
17 participation in ISIS, resulted in the death of the hostages.
18 Thank you.

19 THE COURT: All right. Ladies and gentlemen, it's near
20 the noon hour, and I take it, Mr. Parekh, you have rebuttal?

21 MR. FITZPATRICK: I'll be doing the rebuttal,
22 Your Honor.

23 THE COURT: And how long do you think? An hour?

24 MR. FITZPATRICK: Less than an hour, but I will take
25 the hour, Your Honor. I'll take the offer of the hour and do

1 it --

2 THE COURT: Well, I haven't offered an hour.

3 MR. FITZPATRICK: I'll meet you in the middle,
4 Your Honor, and say 45 minutes.

5 THE COURT: Rather than proceed at this time, let's
6 take the luncheon recess at this time. Then we'll hear from the
7 government, and then I will give you instructions on the law and
8 permit you to deliberate and retire on your verdict.

9 Remember to put your books in the cubbyholes and
10 refrain from discussing the matter amongst yourselves or with
11 anyone, and from undertaking any investigation on your own.

12 You may follow the court security officer out.

13 (Jury out at 11:50 a.m.)

14 THE COURT: Mr. Fitzpatrick, see if you can keep it to
15 45 minutes or less.

16 MR. FITZPATRICK: I appreciate that, Your Honor. I
17 will.

18 THE COURT: Court stands in recess until 1 o'clock.

19 (Recess taken at 11:50 a.m.)

20 THE COURT: We'll have the jury brought in.

21 (Jury in at 1:04 p.m.)

22 THE COURT: Ladies and gentlemen, I trust your lunches
23 once again were adequate. Good.

24 We'll proceed with the government's rebuttal argument,
25 and after that I will give you instructions and permit you to

1 retire and deliberate on your verdict.

2 Mr. Fitzpatrick, are you ready to make the government's
3 rebuttal argument?

4 MR. FITZPATRICK: Yes, Your Honor.

5 THE COURT: Proceed.

6 MR. FITZPATRICK: Thank you.

7 Ladies and gentlemen, like Mr. Parekh, and our
8 colleague, Ms. Ginsberg, I want to thank you for your service.
9 I share in that appreciation. I'm not going to keep you very
10 long. But there's a lot of misinformation and some speculation
11 that you heard in the defense closing argument, and I think it's
12 appropriate to clear it up.

13 The first thing I would like to do is call up
14 Government Exhibit 12-8, please. This is -- Government
15 Exhibit 12-8 was introduced through Mr. Jens Serup. He was the
16 benefactor in helping Daniel Ottosen in his hostage release
17 circumstances. Ms. Ginsberg argued to you that these videos and
18 photographs were made public. These videos and photographs were
19 never made public.

20 The defendant had no ability to see these in open
21 source material. He described them in Government Exhibit 26-10,
22 and the circumstances of the Syrian execution in 26-11, because
23 he was there, because he was holding the camera; because he was
24 panning the camera to the executed Syrian as he was falling into
25 the ditch.

1 How do we know why this was never made public? Well,
2 first of all, Mr. Trembl told you that, the expert in ISIS media
3 distribution. He told you that. Moreover, the exhibit itself -
4 and Mr. Serup told you this - it's password protected with a
5 very extensive security measured protocol for password
6 protection. You see it right there. The point of the Gulf-up
7 was, this is a common ISIS file-sharing account. It was not
8 made publicly available.

9 The second point is the comparison of Mr. Elsheikh's
10 treatment in SDF custody with that of the hostages that you've
11 heard over the past two weeks. Please, please, ladies and
12 gentlemen, think about that. Agent Chiappone testified that the
13 defendant told him that he was treated very well while in SDF
14 custody, and that his treatment was completely different from
15 what ISIS propaganda had stated. The defendant told
16 Agent Chiappone that he was allowed to play chess, wash clothes,
17 pray, work out, shower. This is the exact opposite of how you
18 heard the American, British, and European hostages being
19 treated.

20 With respect to the June 2019 CNN interview, first of
21 all, the defense played you one clip; more importantly, the
22 Sean Langan clips and *The Washington Post* clips, which you've
23 seen in the government's evidence, occurred after that. You can
24 view Mr. Elsheikh in those clips.

25 Look at 26-7, the so-called protocol clip. He's very

1 confident. He is looking directly in the eye, he contradicts --
2 he sets straight Mr. Langan when he's trying to say that someone
3 saw you. It didn't happen. No one saw him. Because he said it
4 wasn't the protocol. And he said it with confidence, and you
5 can hear him say that in 26-7.

6 Also, with respect to his demeanor, his ability, his
7 comfort with himself, his ability to control his own mental
8 faculties, his own decision-making, his free will, all of that,
9 ladies and gentlemen, is expressed in 27-8. He has an extensive
10 discussion with *The Washington Post* reporter on Islamic matters,
11 on the so-called Da'wah, which, by the way, perfectly coincides
12 with Nicolas Hénin's testimony, that they described one of
13 The Beatles, most likely Ringo, as being comfortable and sort of
14 proselytizing and preaching about the Islamic faith. He does
15 that in 27-8. That was in August of 2019, two or months after
16 the June 2019 CNN interview. And if there was more in that CNN
17 interview that was helpful to the defense, you surely would have
18 heard that.

19 Now, the government has an obligation to present to you
20 relevant evidence, relevant evidence that tends to establish a
21 fact in this case. And the relevant evidence from these media
22 interviews was the defendant's participation in The Beatles trio
23 hostage-taking scheme. Over and over and over, in the 26 series
24 and the 27 series of those media clips, every single clip, I
25 submit to you, has a purpose. Some are smaller or

1 circumstantial, corroborative purposes; some are larger
2 purposes.

3 For instance, 27-11, look at the last five or
4 six lines, the concluding statements in 27-11. I may have said
5 26. That was wrong. It's 27-11. The defendant admits he's a
6 Beatle. He says it in those statements. He's being asked by
7 the reporter: "Aren't there four of you?"

8 He says: "No, there are three. There are three."

9 And then they have a discussion about, you know, "They
10 probably couldn't think of another name that only had three, so
11 they called us The Beatles."

12 In addition, think back to the Jenan Musa interview,
13 which is in the 27 series. It's early in the 27 series. She
14 asks -- you'll know it because he makes the statements about
15 slavery. But there's an important point that he tells
16 Jenan Musa before he makes the slavery statement. And she asks
17 him directly: "Are you a member" -- "What do you think" -- or,
18 "Are you a member of The Beatles?"

19 And he doesn't say: Heck no, no way, what are you
20 talking about? He doesn't give the commonsense, natural
21 response to that question. He says: "John Lennon wouldn't like
22 it much." He gives a flippant answer. That's a tacit
23 admission. You can exercise your common sense, your good sense,
24 as the judge will instruct you later, and draw that conclusion.
25 That's tacit admission.

1 Now, further, ladies and gentlemen, on the speculation
2 that we heard from the defense argument, he learned of all this
3 through his buddies, AK - Alexandra Kotey - and Mohammed Emwazi.
4 First of all, there's no evidence in the record of that, which
5 is the definition of speculation. And the judge, once again,
6 will instruct you as to you're not allowed to base your
7 decisions on speculation. It's the evidence, it's the facts,
8 it's the law, and it's the reasonable inferences drawn from the
9 facts and the evidence.

10 There's no evidence that he learned of this stuff from
11 his two buddies and then simply regurgitated it to the media.
12 In fact, the evidence demonstrates exactly the opposite. The
13 evidence in the case shows that this was a secretive
14 organization. They operated and they performed, they exercised
15 good operational security. They were always masked. They wore
16 gloves. They required the hostages to turn around, kneel, face
17 the wall. They exercised professional-level, quality-level,
18 high-grade level operational security. It's not -- it defies,
19 once again, common sense that his two buddies are going to share
20 details with Mr. Elsheikh if he wasn't there.

21 And the James Foley story and the Ottosen book, I
22 simply don't know where to begin with that. So the defendant is
23 in Syria as an ISIS fighter or in SDF custody, and he has the
24 wherewithal, the ability, you know, an Amazon delivery of a book
25 by Daniel Ottosen that was published in Denmark and they

1 translated into English. He can call up the James Foley story?
2 Once again, by the way, ladies and gentlemen of the jury, no
3 evidence of that, no evidence in this record whatsoever that
4 there are any details in those two pieces of media that the
5 defendant could learn. None whatsoever.

6 And it just sort of begs the obvious question, in the
7 wild circumstance that that was even possible, that you could
8 get the Jim Foley story and the Daniel Ottosen book, what's he
9 doing getting it? Why? It doesn't make any sense whatsoever.

10 On the issue of the summary trial and the execution in
11 Iraq, there's no hard core evidence of that. There's a
12 reporter's question, there's a dialogue; there's no evidence of
13 that. And if you look at the Government's Exhibit 28-11, it was
14 our 30-second rebuttal case - 30 seconds - the defendant seems
15 to acknowledge that. You'll have it. You have the transcript
16 and you'll have the recording. He says -- I'm paraphrasing, but
17 he says: I don't see how the Iraqi system has any authority
18 over us. He says: I'm not a legal expert, but I like to think
19 a lot, and I have a lot of time. I don't see how the Iraqi
20 system has any authority over us.

21 He's perfectly comfortable with that assertion. He's
22 not worried at all about a 10-minute trial and summary execution
23 in Iraq. It simply is belied by the evidence in this case.

24 No one ID'd Mr. Elsheikh from that witness box. They
25 were always masked. They exercised operational security. It is

1 now seven, eight years later, and the media interviews were four
2 or five years later.

3 You heard from Dr. Rhodes that accents matter.
4 Variation from listener and speaker accents completely matters
5 when trying to identify speakers or other individuals.

6 Further, the witnesses themselves were scared to death
7 when they were encountering The Beatles. You've heard that.
8 Daniel Ottosen was the last witness to testify to that. I mean,
9 he was petrified to look at these guys. Federico Motka used
10 some colorful language at times, but you heard others say when
11 The Beatles would come and go, it would take Mr. Motka and
12 Mr. Haines a long time to calm down because they remembered what
13 it was like at The Box.

14 So the reasons for no identification is, again, the
15 government has an obligation to provide to you its best
16 evidence. And its best evidence came from the words of the
17 defendant, the smart defendant, the Rambo mode defendant, the
18 sure defendant. See the protocol, right? The committed
19 defendant. These are all his words in these clips.

20 In addition to 27-11, I would suggest, submit to you
21 that you should look again at 26-16, one of the Sean Langan
22 clips. The defendant is shown a magazine or a periodical that
23 has an open picture of Jim Foley. Federico Motka, from that
24 witness stand, said: Yes, that's Jim Foley, that is who I was
25 held with beginning in April of 2013, for the next 13 or

1 14 months.

2 The defendant then goes on to describe Jim Foley in
3 particular detail, details that only a personal participant
4 would know. He gave him the anecdote about asking for food. He
5 said that James was brave, and chillingly, chillingly the
6 defendant said, And James was willing to take it on the neck.

7 That is someone who has personal participation in this
8 scheme. This is not someone who was making up or recalling
9 events that he read in a book or that he saw in a documentary.
10 That is personal participation recollection, plain and simple.

11 And with respect to the argument that -- and
12 Mr. Parekh, in the opening government argument, described the
13 Frida Saide proof of life. Frida Saide was the one in the
14 middle. She had two women next to her dressed in traditional
15 Islamic garb, and they're giving a proof-of-life video or
16 they're giving a plea for their release. And she says, "Please,
17 please, please."

18 And you have one of the clips where the defendant is
19 recounting these things. And he says, "Well, we tell them to
20 say, please, please, make it look ominous." My words, but I'm
21 paraphrasing.

22 Again, that recollection is personal participation.
23 The defense would have you believe that, oh, it's just a common
24 word and he's got no ability to remember that five or six years
25 later. Well, one, you do if you were there and if you

1 participated in this, and if you had a plan and if you were
2 executing your plan. So, yes, you really can remember details
3 like that five or six years later.

4 But moreover, the counter from the defense is that he's
5 remembering all of this stuff from a book and a documentary. So
6 he's got the ability to memorize facts from a book and a
7 documentary, but he's not going to be able to remember words
8 that were spoken five or six years ago when he was personally
9 there? It makes no sense. The argument falls apart.

10 On this whole notion, this whole canard of false
11 confessions, look at the details. In part Mr. Parekh drew it
12 out in the government's initial opening, but I'll repeat just a
13 couple of them and maybe add a couple more.

14 The proof-of-life questions about a cat. I mean,
15 that's an intimate, exacting detail in this case. Louisa Akavi
16 being an older woman, Louisa Akavi is not one of the
17 prominent -- sadly, they all deserve our grace and
18 consideration, but sadly, Louisa Akavi is not a prominent figure
19 in this scheme. And he acknowledges the New Zealander, the
20 kiwi. The makeshift chess, he mentions that. Kayla Mueller
21 being alone in a dark cold room; how the proof-of-life videos
22 needed to be scary and filled with pleas for help. And, again,
23 26-16, Foley was not timid and demanded food.

24 Some of these arguments, ladies and gentlemen, just
25 don't pass the straight-face test, and respectfully, I would ask

1 that you reject them.

2 With respect to the whole voluntariness question, I've
3 addressed this some, and Ms. Ginsberg raised it, that there's
4 this suggestion that his statements were somehow involuntary.
5 This defendant is a savvy operator. I've mentioned to you
6 already the operational security. Remember the Telegram chats
7 that he sends to his brother, and he's talking about how they've
8 had a conquest of Syrian Division 17, and, you know, he's giving
9 other details and he's sort of catching himself, that, "Maybe
10 I'm saying too much as I transmit this message across
11 international borders electronically." And he ends and says,
12 "Talk to my lawyer." Right? He's savvy. He knows what he's
13 doing. This is someone with control over his mental faculties,
14 control over his decision-making. He knows what he's doing.

15 On the argument about no DNA, you know, Ms. Ginsberg is
16 right, if there was relevant probative DNA evidence in this
17 case, we would have presented it to you. There isn't any. But
18 gloves, masks, and the passage of time don't result in DNA
19 evidence. This is not television. You heard that comment as
20 well, sort of have you refer to the television shows that are
21 common these days.

22 Respectfully, respectfully, you have now spent more
23 than 10 days, 11 days in this courtroom. You now are very
24 accustomed to the court's procedures, how formal the procedures
25 are, how exacting the procedures are. You go on headsets to

1 engage in legal arguments with the Court. This isn't
2 television. We did not conclude this investigation and
3 prosecution in 40 minutes or 45 minutes with 15 minutes of
4 commercials. That's not the way it works.

5 This argument that no one could agree on who is who
6 among The Beatles, again, I refer you to the Jenan Musa
7 interview, and also 27-11. He's acknowledging those things.

8 And I think it's important to draw out a distinction
9 for you, ladies and gentlemen, concerning circumstantial
10 evidence, which Judge Ellis will instruct you on, and mere
11 speculation, which is improper. In the government's initial
12 opening, I'll give you one example of circumstantial evidence.
13 Right? And Mr. Parekh described it as "devastating
14 corroborative evidence." And it goes back to the "please,
15 please." You had a witness testify, identified her proof of
16 life where she says, "Please, please, please." So that's a piece
17 of evidence in the case. You then have an interview with the
18 defendant where he describes the same thing, please, please. So
19 you have two pieces of evidence in this case. And with
20 circumstantial evidence, you link up Piece of Evidence 1 with
21 Piece of Evidence 2, and you apply reason and you apply your
22 common sense, and you can draw inferences if you wish and you
23 make a conclusion.

24 And the reason why Mr. Parekh said that was devastating
25 corroborative evidence, among other things, is because it

1 demonstrates that he was there. It is a form of admission,
2 tacit or otherwise. Remember, it's all based on the evidence,
3 what came from the witness box.

4 Speculation is when the argument is prompted by, "Ask
5 yourselves." It's a signal for you. When you hear "ask
6 yourselves," you're being asked to speculate. You're being
7 asked to go outside the record in the case, look up at the wall,
8 look over there, and to wonder and to lose focus of the
9 evidence. That's speculation, and that's impermissible.

10 And on the last point in rebuttal, ladies and
11 gentlemen, before some concluding remarks, with respect to the
12 witnesses in the witness box and no in-court identification,
13 I've already addressed with you, they were masked, operational
14 security, the long passage of time.

15 You'll remember the French witness, Edouard Elias. He
16 was shown a redacted photo, the face redacted out, of the "Rambo
17 mode" picture, which we proved, which we proved is the
18 defendant. We have proven that beyond any doubt, reasonable or
19 otherwise. And when describing the gear, the guard, the
20 military equipment that The Beatles wore, he said, "That's it."
21 Edouard Elias. That's a form of in-court identification.
22 Again, it's circumstantial. You have to link, link, draw some
23 inferences, apply reason, apply common sense, and come to a
24 conclusion. You can do that.

25 If we could please put up 26-5. My apologies, 2-5. I

1 apologize, Your Honor.

2 Ladies and gentlemen, I promised that I would not keep
3 you hear for a prolonged period, and I'm going to try my best to
4 keep to that promise. Because you have been very attentive and
5 it's been a long trial, and you've absorbed a lot of material.

6 In our system of criminal justice, in the United States
7 system of criminal justice, appropriately so, the jury gets the
8 final word. We wouldn't have it any other way. And it is sort
9 of a hallmark of our justice system that you citizens get to
10 decide these cases, and, again, that's the perfect system,
11 respectfully.

12 But I want the last words, if you will, to be about the
13 four American hostages. And they are representative of all of
14 the hostages in this case, all 26 of them; the British
15 decedents, the Japanese decedents, the released European
16 hostages.

17 But what you see up on the screen right now, ladies and
18 gentlemen, are four individuals who always wanted to do the
19 right thing. Always. You heard that again in testimony in this
20 case. James Foley, he was brave, he was thoughtful of others.
21 He could have escaped, but he didn't want to leave John Cantlie
22 behind.

23 Kayla Jean Mueller, she was a prodigy. She graduated
24 from college in two and a half years because she wanted to get
25 out in the world and help people. James Foley wanted to report

1 on the world's problems.

2 Steven Joel Sotloff, brilliant writer, you heard that
3 in this case. And Mr. Sotloff also cared about others. When
4 they learned that Kayla was there, he went to a program of sort
5 of passing notes, and he told the others, "I'll take
6 responsibility if we're caught." And he stood up for himself
7 and he did it, he followed through.

8 Peter Edward Kassig, that man -- the evidence in this
9 case, through his father and other evidence, that man had a
10 heart that would fill this courtroom. He had a heart that was
11 bigger than this courtroom. He founded and operated an
12 ambulance service in a war torn part of the world.

13 All these people wanted to do was to do the right
14 thing. And it's a part of our history and it's a part of our
15 culture. A great American once said: It's always the right
16 time to do the right thing. And these four Americans lived by
17 that creed.

18 So with that, ladies and gentlemen, I respectfully
19 submit to you that now is the right time to do the right thing.
20 The government has proven this case beyond any doubt, reasonable
21 or otherwise. El Shafee Elsheikh was a member of The Beatles
22 trio. You heard in exacting detail from Mr. Parekh's beginning
23 closing argument, exacting detail.

24 But we've certainly proven this case beyond a
25 reasonable doubt. Is it possible to speculate and to get

1 distracted by shiny objects? It's possible, but it's not
2 reasonable. And the standard is reasonable doubt. And, ladies
3 and gentlemen, for all eight counts, we have proven this case
4 beyond a reasonable doubt.

5 And I humbly suggest to you that a conviction on all
6 eight counts is the right thing to do. Thank you.

7 THE COURT: All right. Ladies and gentlemen, I have
8 now to give you instructions. These instructions may take as
9 long as an hour. Is there any reason why you would need a
10 recess at this time? All right. Let's proceed.

11 Members of the jury -- let me say as a prefatory
12 comment, that you will not have these instructions in writing,
13 but you will have a tape recording of these instructions that
14 will be provided to you if you wish to hear them again. You're
15 not required to hear them again, but it is provided to you if
16 you feel you need to.

17 Members of the jury, now that you have heard the
18 evidence and the arguments of counsel, it becomes my duty to
19 give you instructions as to the law applicable to this case.
20 All of the instructions of law given to you by the Court, those
21 given to you at the beginning of the trial, those given to you
22 during the trial, and these final instructions, must guide and
23 govern your deliberations. It is your duty as jurors to follow
24 the law as stated by the Court, and to apply the rules of law to
25 the facts as you find them from the evidence in the case.

1 Now, counsel have quite properly referred to some of
2 the governing rules of law in their arguments. If, however, any
3 difference appears to you between the law as stated by counsel
4 and the law as I state it to you, you are, of course, to be
5 governed by the Court's instructions.

6 Nothing I say in these instructions is to be taken as
7 an indication that I have any opinion about the facts of the
8 case, or what that opinion is. It is not my function to
9 determine the facts, but yours.

10 You are not to single out one instruction alone as
11 stating the law, but must consider the instructions as a whole.
12 And neither are you to be concerned with the wisdom of any rule
13 of law stated by the Court. Regardless of any opinion you may
14 have as to what you think the law ought to be, it would be a
15 violation of your sworn duty as jurors if you ignore the law as
16 I give it to you and apply some other law. It would also be a
17 violation of your sworn duty as jurors of the facts to base a
18 verdict upon anything but evidence in the case.

19 You've been chosen as jurors for this trial in order to
20 evaluate all the evidence and to decide each of the factual
21 questions presented by the allegations brought by the government
22 in the indictment and the plea of not guilty by the defendant.
23 In deciding the issues presented to you for decision in this
24 trial, you must not be persuaded by prejudice -- bias,
25 prejudice, or sympathy for or against any of the parties in this

1 case, or any public opinion. You should not be influenced by
2 any person's race, color, religion, national ancestry, or sex.
3 Justice through trial by jury must always depend upon the
4 willingness of each individual juror to seek the truth as to the
5 facts from the same evidence presented to all jurors, and to
6 arrive at a verdict by applying the same rules of law given by
7 the Court.

8 As I told you at the outset, the law presumes the
9 defendant to be innocent of a crime. Thus, a defendant,
10 although accused, begins the trial with a clean slate, with to
11 evidence against him. And the law permits nothing but legal
12 evidence presented before the jury to be considered in support
13 of any charge against the accused. So the presumption of
14 innocence alone is sufficient to acquit a defendant, unless the
15 jurors are satisfied beyond a reasonable doubt of the
16 defendant's guilt after careful and impartial consideration of
17 all the evidence in the case.

18 It is not required that the defendant -- or that the
19 government prove guilt beyond all possible doubt. The test is
20 one of reasonable doubt. And the jury will remember that a
21 defendant is never to be convicted on mere suspicion or
22 conjecture. The burden is always on the prosecution to prove
23 guilt beyond a reasonable doubt. This burden never shifts to
24 the defendant, for the law never imposes on a defendant in a
25 criminal case the burden or duty of calling any witnesses or

1 producing any evidence. So if the jury, after careful and
2 impartial consideration of all the evidence in the case, has a
3 reasonable doubt that the defendant is guilty of a charge, it
4 must acquit.

5 Now, there's nothing particularly different in the way
6 that a juror should consider the evidence in a trial from that
7 in which any reasonable and careful person would treat any very
8 important question. It must be resolved by examining facts,
9 opinions, and evidence. You're expected to use your good sense
10 in considering and evaluating the evidence in the case, for only
11 those purposes for which it has been received, and to give such
12 evidence a reasonable and fair instruction in light of your
13 common knowledge and the natural tendencies and inclinations of
14 human beings. If the defendant be proved guilty beyond a
15 reasonable doubt, say so. If not proved guilty beyond a
16 reasonable doubt, say so.

17 Keep constantly in mind that it would be a violation of
18 your sworn duty to base a verdict upon anything other than the
19 evidence received in the case and the instructions of the Court.
20 Remember as well that the law never imposes on a defendant in a
21 criminal case the burden or duty of calling any witnesses or
22 producing any evidence, because the burden of proving guilt
23 beyond a reasonable doubt is always with the government.

24 Now, the evidence in the case, as I told you at the
25 outset, consists of the sworn testimony of the witnesses,

1 regardless of who may have called them, all exhibits received in
2 evidence, regardless of who may have produced them -- and you'll
3 have all the exhibits with you in the jury room, and you'll also
4 have a device, or devices -- if it involves playing clips or
5 films or videos, you'll have that equipment there with you.
6 That is, all exhibits received into evidence, regardless of who
7 may have produced them, all facts which may have been agreed or
8 stipulated to - and there were some of those, you'll have those
9 in the jury room - and all -- I don't think I took judicial
10 notice of any facts.

11 MR. FITZPATRICK: I don't recall you did.

12 THE COURT: I'm going to omit that, Ms. Ginsberg.

13 MS. GINSBERG: Yes, sir, I agree.

14 THE COURT: Now, any proposed testimony or proposed
15 exhibit to which an objection was sustained by the Court, and
16 any testimony or exhibit ordered stricken by the Court must be
17 entirely disregarded, and anything you may have seen or read or
18 heard outside the courtroom is not proper evidence and must be
19 entirely disregarded.

20 Questions, objections, statements, and arguments of
21 counsel are not evidence in the case. You are to base your
22 verdict only on the evidence received in the case. And in your
23 consideration of the evidence received, however, you're not
24 limited to the bald statements of the witnesses, or to the bald
25 assertions in the exhibits.

1 In other words, you're not limited solely to what you
2 see and hear as the witnesses testify or as the exhibits are
3 admitted. You're permitted to draw from the facts which you
4 find have been provided such reasonable inferences as you feel
5 are justified in light of your experience and common sense.

6 And the questions asked by a lawyer for either party in
7 this case are not evidence. If the lawyer asks a question of a
8 witness which contains an assertion of fact, you may not
9 consider the assertion by the lawyer as any evidence of that
10 fact. Only the answers are evidence.

11 Now, as I told you at the outset, there are two types
12 of evidence which are generally presented during a trial, direct
13 evidence and circumstantial evidence. Direct evidence is the
14 testimony of a person who asserts or claims to have actual
15 knowledge of a fact, such as an eyewitness. Circumstantial
16 evidence is proof of a chain of facts and circumstances
17 indicating the existence of a fact.

18 The law makes no distinction between the weight or
19 value to be given to either direct or circumstantial evidence.
20 Nor is a greater degree of certainty required of circumstantial
21 evidence than of direct evidence. You should weigh all the
22 evidence in the case, and, after weighing all the evidence in
23 the case, if you are not convinced of the guilt of the defendant
24 beyond a reasonable doubt, you must find the defendant not
25 guilty.

1 I've mentioned inferences. Inferences are simply
2 deductions or conclusions which reason and common sense lead the
3 jury to draw from the evidence in the case.

4 Now, testimony and exhibits can be admitted into
5 evidence during the trial only if certain criteria or standards
6 are met. It's the sworn duty of the attorney on each side of a
7 case to object when the other side offers testimony or an
8 exhibit which that attorney believes is not properly admissible
9 under the rules of law. Only by raising an objection can a
10 lawyer request and obtain a ruling from the Court on the
11 admissibility of evidence being offered by the other side. You
12 should not be influenced against an attorney or his or her
13 client because the attorney has made an objection.

14 Do not attempt, moreover, to interpret my rulings on
15 objections as somehow indicating how I think you should decide
16 this case. I'm simply making a ruling on a legal question. By
17 allowing the testimony or other evidence to be introduced over
18 the objections of an attorney, the Court does not, unless
19 expressly stated, indicate any opinion as to the weight or
20 effect of such evidence. And, as stated before, and indeed many
21 times, you're the sole judges of the credibility of all the
22 witnesses and the weight and effect of all evidence.

23 On the other hand, where the Court has sustained an
24 objection to a question addressed to a witness, jurors must
25 disregard the statement, the question entirely. You may draw no

1 inference from the wording of the question or speculate as to
2 what the witness would have said had he or she been permitted to
3 answer the question.

4 I don't recall doing this. I'll do it anyway. It is
5 the duty of the Court to admonish an attorney who, out of zeal
6 for his or her cause, does something which I feel is not in
7 keeping with the rules of evidence or procedure. You are to
8 draw absolutely no inference against the side to whom an
9 admonition of the Court may have been addressed during the trial
10 of this case.

11 And during the course of the trial, I occasionally
12 asked questions of a witness. Very rarely, but I occasionally
13 asked questions of a witness. Do not assume that I hold any
14 opinion on the matters to which my questions related. The Court
15 may have asked the question simply to clarify a matter, not to
16 help one side of the case or hurt another side.

17 And remember, once again, at all times, you as jurors
18 are the sole judges of the facts of this case.

19 Counsel, any reason to give 12?

20 MR. FITZPATRICK: No, Your Honor.

21 MR. MACMAHON: No, Your Honor.

22 THE COURT: All right. I won't.

23 The rules of evidence, as I told you, ordinarily do not
24 permit witnesses to testify as to their own opinions or their
25 own conclusions about issues in the case. And an exception to

1 this rule exists as to those witnesses who were described as
2 expert witnesses. An expert witness is someone who, by
3 education or experience, may have become knowledgeable in some
4 technical, scientific, or very specialized area. Such knowledge
5 or experience may be of assistance to you in understanding some
6 of the evidence, or in determining a fact. An expert witness in
7 that area may state an opinion as to relevant and material
8 matter in which he or she claims to be an expert.

9 You should consider the expert received into evidence
10 in this case and give it such weight as you may think it
11 deserves. You should consider the testimony of expert witnesses
12 just as you consider other evidence in the case. If you should
13 decide that the opinion of an expert witness is not based on
14 sufficient education or experience, or if you should conclude
15 that the reasons given in support of the opinion are not sound,
16 or if you should conclude that the opinion is outweighed by
17 other evidence, you may disregard the opinion in part or in its
18 entirety. As I've told you several times, you, the jury, are
19 the sole judges of the facts of this case.

20 Now, I think I also mentioned this. If any reference
21 by the Court or by counsel to matters of testimony or exhibits
22 does not coincide with your recollection of that evidence, it is
23 your recollection which should control during your
24 deliberations, and not the statement of the Court or counsel.
25 As I've said several times, you're the sole judges of the

1 evidence received in this case.

2 Now, you as jurors are the sole and exclusive judges of
3 the credibility of each of the witnesses called to testify in
4 this case, and only you determine the importance or the weight
5 that their testimony deserves. And after making your assessment
6 concerning the credibility of a witness, you may decide to
7 believe all of that witness' testimony or only a portion of it,
8 or none of it.

9 In making your assessment, you should carefully
10 scrutinize all of the testimony given, the circumstances under
11 which each witness has testified, and all of the other evidence
12 which tends to show whether a witness is worthy of belief.
13 Consider each witness' intelligence, motive to testify, state of
14 mind while on the stand. Consider the witness' ability to
15 observe matters to which he or she has testified, and consider
16 whether he or she impresses you as having an accurate memory or
17 recollection of these matters. Consider also any relation a
18 witness may bear to either side of the case, the manner in which
19 each witness might be affected by your verdict, and the extent
20 to which, if at all, each witness is either supported or
21 contradicted by other evidence in the case.

22 Now, inconsistencies or discrepancies in the testimony
23 of a witness or between the testimony of different witnesses may
24 or may not cause you to disbelieve or discredit such testimony.
25 Two or more persons witnessing an incident or a transaction may

1 simply see or hear it differently. Innocent misrecollection,
2 like failure of recollection, is not an uncommon experience. It
3 gets more common as you get older. In weighing the effect of
4 the discrepancy, however, always consider whether it pertains to
5 a matter of importance or an insignificant detail, and consider
6 whether the discrepancy results from innocent error or from
7 intentional falsehood.

8 After making your own judgment or assessment concerning
9 the believability of a witness, you can then attach such
10 importance or weight to that testimony, if any, that you feel it
11 deserves. You will then be in a position to decide whether the
12 government has proven the charges beyond a reasonable doubt.

13 Now, as I've told you, as I think I mentioned to you
14 earlier, the defendant in a criminal case has an absolute right,
15 under our Constitution, not to testify. The fact that the
16 defendant did not testify must not be considered or discussed by
17 the jury in any way when deliberating and in arriving at your
18 verdict. No inference of any kind may be drawn from the fact
19 that the defendant decided not to exercise -- or decided to
20 exercise the privilege under the Constitution and did not
21 testify. And, as stated before, the law never imposes on a
22 defendant in a criminal case the burden or duty of calling any
23 witnesses or of producing any evidence.

24 And as I told you I think at the outset, the indictment
25 in this case is only a formal method used by the government to

1 accuse a defendant of a crime. It is not evidence of any kind
2 against the defendant. The defendant is presumed to be innocent
3 of the crime or crimes charged. Even though the indictment has
4 been returned against the defendant, the defendant begins the
5 trial with absolutely no evidence against him, and the defendant
6 has pled not guilty to this indictment, and therefore denies
7 that he's guilty of the charges.

8 The defendant is not on trial for any act or any
9 conduct not specifically charged in the indictment. A separate
10 crime is charged in each count of the indictment. Each charge
11 and the evidence pertaining to it should be considered
12 separately by the jury, and the fact that you may find a
13 defendant guilty or not guilty as to one of the charges --
14 offenses charged should not control your verdict as to the other
15 offenses charged.

16 Now, you've heard testimony of law enforcement
17 officials and -- the United States Department of Defense
18 personnel?

19 MR. FITZPATRICK: Yes, Your Honor.

20 THE COURT: The fact that a witness may be employed by
21 the federal government as law enforcement or
22 Department of Defense does not mean that his or her testimony is
23 necessarily deserving of more or less consideration, or greater
24 or lesser weight than that of an ordinary witness. At the same
25 time, it is quite legitimate for defense counsel to try to

1 attack the credibility of a law enforcement or Department of
2 Defense witness on the grounds that his or her testimony may be
3 colored by a personal or professional interest in the outcome of
4 the case.

5 It is your decision, after reviewing all of the
6 evidence, whether to accept the testimony of the law enforcement
7 and Department of Defense witnesses, and to give that testimony
8 whatever weight, if any, you find it deserves.

9 You also heard evidence that Omer Kuzu hopes to receive
10 a reduced sentence on criminal charges pending against him in
11 return for his cooperation with the government in this case.
12 Kuzu entered into an agreement with the prosecution which
13 provides that in return for his assistance, the prosecution will
14 recommend a less severe sentence, which could be less than the
15 240 months recommended sentence for the crime of which he has
16 been convicted.

17 If the prosecutor handling this witness' case believes
18 he has provided substantial assistance, that prosecutor can
19 file, in the court in which the charges are pending against this
20 witness, a motion to reduce his sentence below the 240 months
21 sentence recommended. The judge has no power to reduce a
22 sentence for substantial assistance unless the prosecution,
23 acting through the United States Attorney, files such a motion.
24 If such a motion for reduction of sentence for substantial
25 assistance is filed by the prosecution, then it is up to the

1 judge to decide whether to reduce the sentence at all, and, if
2 so, how much to reduce it.

3 You may give the testimony of this witness such weight
4 as you think it deserves. Whether or not the testimony of the
5 witness may have been influenced by his hope of receiving a
6 reduced sentence is for you to decide.

7 Your decision on the facts of this case should not be
8 determined by the number of witnesses testifying for or against
9 a party. You should consider all the facts and circumstances in
10 evidence to determine which of the witnesses you choose to
11 believe or not to believe. You may find that the testimony of a
12 smaller number of witnesses on one side is more credible than
13 the testimony of a greater number of witnesses on the other
14 side.

15 Look at 24. Were there demonstrative exhibits that are
16 going to be sent back?

17 MR. FITZPATRICK: There are, Your Honor.

18 THE COURT: All right. That's right.

19 Certain demonstrative evidence has been admitted and
20 has been shown to you during the trial for the purpose of
21 explaining facts that are allegedly contained in recordings,
22 documents, or testimony, which are also in evidence. These
23 demonstrative exhibits are not independent evidence of those
24 facts; rather, they have been prepared by a party to aid you in
25 understanding the evidence to which the exhibits refer.

1 Your deliberations should focus on weighing the
2 evidence to which the exhibits refer, but you may use the
3 demonstrative exhibits to help you understand the meaning and
4 significance of that evidence. You must independently assess
5 whether these exhibits accurately summarize or explain the
6 underlying evidence, and then give that underlying evidence such
7 weight or importance, if any, as you feel it deserves.

8 The indictment charges that the offenses alleged were
9 committed on or about -- or in or about or on or about a certain
10 date. Although it's necessary for the government to prove
11 beyond a reasonable doubt that the offense was committed on a
12 date reasonably near the date range alleged in the indictment,
13 it is not necessary for the government to prove that the offense
14 or offenses were committed precisely on the dates charged.

15 The term "knowingly" is used in the indictment and
16 these instructions. To describe an alleged state of mind -- or
17 the alleged state of mind of the defendant means that the
18 defendant was conscious and aware of his actions or omissions,
19 realized what he was doing or what was happening around him, and
20 did not act because of ignorance, mistakes, or accident.

21 The intent of a person, or the knowledge that a person
22 possesses at any given time, may not ordinarily be proved
23 directly because there's no way of directly scrutinizing the
24 workings of the human mind. In determining the issue of what a
25 person knew or what a person intended at a particular time, you

1 may consider any statements made or acts done by that person,
2 and all other facts and circumstances received in evidence which
3 may aid in your determination of that person's knowledge or
4 intent.

5 You may infer, but you are certainly not required to
6 infer, that a person intends the natural and probable
7 consequences of acts knowingly done or knowingly omitted. It's
8 entirely up to you, however, to decide what facts to find from
9 the evidence received during the trial.

10 Parties have submitted typewritten transcripts of
11 certain tape recordings which have been admitted into evidence.
12 Some of these recordings are in English, others are in Arabic.
13 For the English language recordings, you are specifically
14 instructed that one of the transcripts, correctly or
15 incorrectly, reflects the content of the conversations or the
16 identity of the speaker is entirely for you to determine.

17 You should make this determination without prejudice or
18 bias, based on the testimony regarding preparation of the
19 transcripts, your own comparison of the transcript to what you
20 hear or heard on the tapes, and any other relevant evidence or
21 testimony. Should you determine that the transcript of an
22 English language recording is incorrect or inaccurate in any
23 respect, you should disregard it to that extent.

24 For the Arabic language recordings, the transcripts are
25 also a translation from the original language to English. That

1 translation has been performed by a translator that this court
2 has deemed qualified to do so. Although some of you may know
3 the Arabic language, it is important that all jurors consider
4 the same evidence that has been presented in open court.
5 Therefore, you must accept the English translation contained in
6 the transcript and disregard any different meaning of the
7 non-English words.

8 You have heard that the defendant made a statement to
9 various media outlets and law enforcement officials. Whether
10 that statement -- whether such a statement was voluntarily
11 given, and, if so, what weight to give it, is entirely up to
12 you. In other words, these are questions of fact which you --
13 which are up to the jury to decide.

14 In determining whether the statement was voluntary and
15 what weight to give it, if any, you should consider the totality
16 of the circumstances. In determining whether any statement,
17 confession, admission, or act or omission alleged to have been
18 made by the defendant outside of court and after a crime has
19 been committed was made or done -- or was knowing and
20 voluntarily made or done, the jury should consider the age,
21 training, education, occupation, and physical and mental
22 condition of the defendant and his treatment while making the
23 statement as shown by the evidence in the case.

24 Now, Count 1 -- Counts 1, 6, 7, and 8 each charge the
25 defendant with conspiring to commit certain offenses. A

1 criminal conspiracy is an agreement or a mutual understanding
2 knowingly made or knowingly entered into by at least two people
3 to achieve a certain objective that is itself a crime.

4 A conspiracy is, in a very true sense, a partnership in
5 crime. The government must prove that the defendant you're
6 considering, and at least one other person, knowingly and
7 deliberately arrived at an agreement or other understanding that
8 they or perhaps others would pursue some endeavor which have
9 completely satisfied all the elements of the substantive
10 criminal offense. It is the proof of this conscious
11 understanding and deliberate agreement by the alleged members
12 that should be central to your consideration of the charge of
13 conspiracy.

14 A criminal conspiracy or agreement, like any other kind
15 of agreement or understanding, need not be formal, written, or
16 even expressed directly in every detail. To prove the existence
17 of a conspiracy or an illegal agreement, the government is not
18 required to produce a written contract between the parties, or
19 even produce evidence of an express oral agreement spelling out
20 all of the details of the understanding.

21 To prove that a conspiracy existed, moreover, the
22 government is not required to show that all of the people named
23 in the indictment as members of the conspiracy were, in fact,
24 parties to the agreement, or that all of the members of the
25 alleged conspiracy were named or charged, or that all of the

1 people whom the evidence shows were actually members of a
2 conspiracy agreed to all the means and methods set out in the
3 indictment. Unless the government proves beyond a reasonable
4 doubt that a conspiracy, as just explained, actually existed,
5 you must acquit the defendant of the conspiracy count.

6 Before the jury may find that a defendant or any other
7 person became a member of the conspiracy charged in the
8 indictment, the evidence in the case must show beyond a
9 reasonable doubt that the defendant knew the purpose or goal of
10 the agreement or understanding, and deliberately entered into
11 the agreement intending in some way that the underlying crime be
12 committed. It is not necessary that the defendant agree to
13 commit the offense or any element of the offense personally, but
14 he must agree or intend that the underlying crime be committed
15 by some member of the conspiracy.

16 If the evidence establishes beyond a reasonable doubt
17 that the defendant you are considering knowingly and
18 deliberately entered into an agreement intending that the
19 offense alleged in the indictment be committed, it is not
20 important that the defendant did not join the agreement at its
21 beginning, or did not know all of the details of the agreement,
22 or did not know all of his or her co-conspirators, or did not
23 participate in each act of the agreement, or did not play a
24 major role in the accomplishing the unlawful goal, or had only a
25 slight connection with the conspiracy.

1 Merely associating with others and discussing common
2 goals, mere similarity of conduct between or amongst such
3 persons, or merely being present at a place where a crime takes
4 place or is discussed, or even knowing about criminal conduct,
5 does not of itself make someone a member of a conspiracy or a
6 conspirator. Unless the government proves beyond a reasonable
7 doubt that a conspiracy, as just explained, actually existed,
8 then you must acquit the defendant.

9 The government is not required to prove that the
10 parties to or members of the alleged conspiracy or agreement
11 were successful in achieving any or all objects of the agreement
12 or conspiracy. Likewise, if you conclude that the government
13 proved beyond a reasonable doubt that the defendant joined a
14 criminal agreement knowingly and deliberately, any subsequent
15 change or abandonment of the criminal objective does not mean
16 the defendant is not guilty of the conspiracy.

17 Because the crime of conspiracy occurs during the
18 entire time a criminal agreement exists, a defendant is guilty
19 of committing the offense through every moment of the
20 agreement's existence, even if he or others later alter,
21 abandon, or terminate the agreement.

22 Now, Title 18 of the U.S. Code, Section 1203(a),
23 defines the offense of hostage-taking and conspiring to commit
24 hostage-taking. The statute provides, in pertinent part,
25 whoever, whether inside or outside the United States, seizes or

1 detains and threatens to kill, to injure, or to continue to
2 detain another person in order to compel a third person or a
3 government organization to do or abstain from doing any act as
4 an explicit or implicit condition for the release of the person
5 detained, or attempts or conspires to do so, shall be guilty of
6 a crime when certain jurisdictional requirements that I'll
7 explain shortly are satisfied.

8 So Count 1 of the indictment charges that from in and
9 around November 2012, continuing to on or about February 7,
10 2015, the defendant, El Shafee Elsheikh, who was first brought
11 to and found in the Eastern District of Virginia, along with
12 Alexanda Amon Kotey, Mohammed Emwazi, and others known and
13 unknown to the grand jury, did conspire to seize, detain,
14 threaten to kill, injure, and continue to detain nationals of
15 the United States of America traveling outside the
16 United States, including James Wright Foley, whose death
17 resulted from this offense; Kayla Jean Mueller, whose death
18 resulted from this offense; Steven Joel Sotloff, whose death
19 resulted from this offense; Peter Edward Kassig, whose death
20 resulted from this offense, each in order to compel a third
21 person and a governmental agency, including but not limited to
22 the United States of America and any part of its government, to
23 pay a monetary ransom for the release of that U.S. national, and
24 to do and abstain from doing any act as an explicit or implicit
25 condition of the release of that person. And that's all in

1 violation of Title 18 U.S. Code Section 1203.

2 So in order to prove the defendant guilty of conspiring
3 to commit hostage-taking as alleged in Count 1 of the
4 indictment, the government must prove each of the following
5 elements beyond a reasonable doubt:

6 First, two or more persons entered into a conspiracy,
7 the object of which was to commit hostage-taking, as described
8 in the indictment. Second, at some point, at some time during
9 the existence or life of the conspiracy, the defendant knew of
10 the purpose of the conspiracy. And, third, with knowledge and
11 purpose of the conspiracy, the defendant deliberately joined the
12 conspiracy with the intent to further its purpose.

13 And finally, to establish jurisdiction, whereas here,
14 the offense took place outside the United States, the government
15 must prove beyond a reasonable doubt at least one of the
16 following:

17 That the person seized or detained, or whose seizure or
18 detention was the object of the conspiracy, was a national of
19 the United States; that the defendant was found in the
20 United States; or that the United States government was the
21 organization sought to be compelled.

22 The government has also charged that this offense
23 resulted in a person's death. Therefore, when it comes time to
24 deliberate on Count 1, you must first determine whether the
25 government has proven beyond a reasonable doubt that the

1 defendant is guilty of conspiring to commit hostage-taking,
2 given the elements I've just described to you.

3 If you find that the defendant is guilty of conspiring
4 to commit hostage-taking, you must then determine whether the
5 government has proven beyond a reasonable doubt that at least
6 one person's death resulted from the commission of this offense.
7 And I'll give you instructions on the standard for death
8 resulting at the end of my instructions on the other counts.

9 Now, Counts 2 through 5 of the indictment charge that
10 from in or about November 22, 2012, to on or about August 19,
11 2014, the defendant, El Shafee Elsheikh, who was first brought
12 to and found in the Eastern District of Virginia, and
13 Alexanda Kotey and Mohammed Emwazi and others, known and
14 unknown, all aided and abetted by each other, did seize, detain,
15 threaten to kill, injure, and continue to detain
16 James Wright Foley, a national of the United States of America
17 traveling outside the United States, in order to compel
18 James Wright Foley's parents and a governmental organization,
19 including but not limited to the United States of America and
20 any part of its government, to pay a monetary ransom for the
21 release of James Wright Foley, and to do or to abstain from
22 doing any act as an explicit or implicit condition for the
23 release of James Wright Foley, and James Wright Foley's death
24 resulted from the commission of this offense.

25 Those are the allegations of the indictment, and the

1 indictment says in violation of Title 18 U.S. Code Section 1203
2 and 2.

3 And Count 3 is essentially similar, and this one goes
4 to Kayla Jean Mueller. It reads as follows: From on or about
5 August 4, 2013, to on or about February 7, 2015, the defendant,
6 El Shafee Elsheikh, who was first brought to and found in the
7 Eastern District of Virginia, and Alexanda Amon Kotey and
8 Mohammed Emwazi and others known and unknown to the grand jury,
9 all aided and abetted by each other, did seize, detain, and
10 threaten to kill, injure, and continue to detain
11 Kayla Jean Mueller, a national of the United States of America
12 traveling outside the United States, in order to compel
13 Kayla Jean Mueller's parents and a governmental organization,
14 including but not limited to the United States of America and
15 any part of its government, to pay a monetary ransom for the
16 release of Kayla Jean Mueller, and to do or abstain from doing
17 any act as an explicit or implicit condition for the release of
18 Kayla Jean Mueller.

19 And the indictment also alleges that
20 Kayla Jean Mueller's death resulted from the commission of this
21 offense, all in violation of Title 18 Sections 1203 and 2.

22 Count 4, essentially similar, this one relates to
23 Steven Joel Sotloff. From on or about August 4, 2013, to on or
24 about September 2, 2014, the defendant, El Shafee Elsheikh, who
25 was first brought to and found in the Eastern District of

1 Virginia, Alexandra Amon Kotey, and Mohammed Emwazi and others
2 known and unknown to the grand jury, all aided and abetted by
3 each other, did seize, detain, and threaten to kill, injure, and
4 continue to detain Steven Joel Sotloff, a national of the
5 United States of America traveling outside of the United States,
6 in order to compel Steven Joel Sotloff's parents and the
7 governmental organization, including but not limited to the
8 United States of America, and any part of the government, to pay
9 a monetary ransom for the release of Steven Joel Sotloff, and to
10 do and abstain from doing any act as an explicit or implicit
11 condition for the release of Steven Joel Sotloff.

12 And the indictment also alleges Steven Joel Sotloff's
13 death resulted from the commission of this offense, all in
14 violation of Title 18 U.S. Code Sections 1203 and 2.

15 Count 5 of the indictment is essentially similar. This
16 one pertains to Peter Edward Kassig. From on or about
17 October 2nd, 2013, to on or about November 16, 2014, the
18 defendant, El Shafee Elsheikh, who will first be brought to and
19 found in the Eastern District of Virginia, Alexandra Amon Kotey,
20 and Mohammed Emwazi, and others known and unknown to the grand
21 jury, all aided and abetted by each other, did seize, detain,
22 and threaten to kill, injure, and continued to detain
23 Peter Edward Kassig, a national of the United States of America
24 traveling outside the United States, in order to compel
25 Peter Edward Kassig's parents and a governmental organization,

1 including but not limited to the United States of America, and
2 any part of its government, to pay a monetary ransom for the
3 release of Peter Edward Kassig, and to do or -- or to do and
4 abstain from doing any act as an explicit or implicit condition
5 for the release of Peter Edward Kassig.

6 And the indictment also alleges Peter Edward Kassig's
7 death resulted from the commission of this offense, all in
8 violation of Title 18 U.S. Code Sections 1203 and 2.

9 Now, in order to prove Defendant guilty of
10 hostage-taking as alleged in Counts 2 through 5 of the
11 indictment, which I've just read to you, the government must
12 prove each of the following elements beyond a reasonable doubt:

13 First, that the defendant seized or detained the victim
14 named in the indictment; second, that the defendant threatened
15 to kill, injure, or continue to detain that person; third, that
16 the defendant acted with the purpose of compelling a third
17 person or government organization to act in some way, either to
18 do or to abstain from doing any act as an explicit or implicit
19 condition for releasing the person detained; and fourth, to
20 establish jurisdiction, whereas here the offense occurred
21 outside the United States, the government must prove beyond a
22 reasonable doubt at least one of the following:

23 First, that the defendant [sic] seized or detained was
24 a national of the United States, or that the defendant [sic] was
25 found in the United States, or that the United States government

1 was the organization sought to be compelled.

2 The government has also charged that these offenses
3 resulted in the death of each victim named in the indictment.
4 Therefore, when it comes time to deliberate on Counts 2 through
5 5, you must first determine whether the government has proven
6 beyond a reasonable doubt that the defendant is guilty of
7 hostage-taking under the elements I have just described. If you
8 find that the defendant is guilty of hostage-taking on a
9 particular count, you must then determine whether the government
10 has proven beyond a reasonable doubt that the victim's death
11 resulted from the commission of that offense. And I'll give you
12 instructions for the standard of death resulting at the end of
13 the instructions on these counts.

14 The first element the government must prove beyond a
15 reasonable doubt for these counts is that the defendant seized
16 or detained a person. To seize or detain means to restrain,
17 hold, or confine a person against that person's will and without
18 that person's consent for an appreciable period of time. The
19 government does not have to prove that the defendant used
20 physical force or violence to restrain the hostages. It is
21 sufficient that the defendant threatened, frightened, deceived,
22 or coerced the hostages so as to cause the hostages to remain
23 under Defendant's control.

24 The second element the government must prove beyond a
25 reasonable doubt is that the defendants threatened to kill,

1 injure, or continue to detain the hostages. A threat is a
2 serious statement expressing an intention to kill, injure, or
3 continue to detain someone, as distinguished from idle or
4 careless talk, exaggeration, or something said in a joking
5 manner. A statement is a threat if it was made under such
6 circumstances that a reasonable person hearing or reading the
7 statement would understand it as a serious expression of intent
8 to inflict harm on the person detained.

9 The third element the government must prove beyond a
10 reasonable doubt is that the defendant acted with the purpose to
11 compel a third party or governmental organization to do or to
12 abstain from doing some act as a condition for releasing the
13 person detained. To satisfy this element, the government must
14 prove that the threat the defendant made was for the purpose of
15 compelling a third party other than the person being held to do
16 something, including paying a ransom, or to refrain from doing
17 something. Further, the defendant must have acted knowingly and
18 intentionally, and not as a result of accident or mistake. And
19 the term "governmental organization" includes the United States
20 government or any agency or department thereof.

21 A person may violate the law, even though he does not
22 personally do each and every act constituting the offense, if
23 that person aided and abetted the commission of the offense.
24 Section 2(a) of Title 18 of the U.S. Code provides that whoever
25 commits an offense against the United States, or aids, abets,

1 counsels, commands, induces, or procures its commission, is
2 punishable as principal.

3 Now, before a defendant may be held responsible for
4 aiding and abetting others in the commission of a crime, it's
5 necessary for the government to prove beyond a reasonable doubt
6 that the defendant knowingly and deliberately associated himself
7 in some way with the crime charged, and participated in it with
8 the intent to commit the crime.

9 In order to prove the defendant guilty of aiding and
10 abetting the commission of the crimes charged in Counts 2
11 through 5 of the indictment, the government must prove beyond a
12 reasonable doubt that the defendant knew that the crime charged
13 was to be committed, or was being committed, that the defendant
14 knowingly did some act for the purpose of aiding or commanding
15 or encouraging the commission of that crime, and that the
16 defendant acted with the intention of causing the crime charged
17 to be committed.

18 Before the defendant may be found guilty as an aider or
19 abetter to the crimes, the government must also prove beyond a
20 reasonable doubt that someone committed each of the essential
21 elements of the offenses charged, as I have previously explained
22 those offenses to you.

23 Merely being present at the scene of a crime, or merely
24 knowing that a crime is being committed or is about to be
25 committed is not sufficient conduct for the jury to find that

1 the defendant aided and abetted the commission of that crime.
2 The government must prove that a defendant knowingly and
3 deliberately associated himself with the crimes in some way as a
4 participant and someone who wanted the crime to be committed,
5 not as a mere spectator.

6 Now, a person may also be found guilty of committing an
7 offense when his co-conspirator commits a substantive crime in
8 furtherance of their conspiracy, and that crime was reasonably
9 foreseeable to him.

10 (Brief pause.)

11 THE COURT: I paused briefly to allow the deputy clerk
12 to turn the tape over on the machine. I thought I had paused at
13 the right time but she said, no, we have more. It was a timing
14 difference.

15 A person may also be found guilty of committing an
16 offense when his co-conspirator commits a substantive crime in
17 furtherance of their conspiracy, and that crime was reasonably
18 foreseeable to that person. In other words, a defendant is
19 accountable for the crimes committed by his co-conspirators as
20 long as those crimes were committed during the life of the
21 conspiracy, were in furtherance of the conspiracy, and were
22 reasonably foreseeable to the defendant.

23 In this case the government has charged the defendant
24 with conspiring with others to commit hostage-taking resulting
25 in death in Count 1, and has charged the defendant with

1 committing four substantive offenses of hostage-taking resulting
2 in death in Counts 2 through 5. If you find that the government
3 has proven beyond a reasonable doubt the existence of the
4 conspiracy charged in Count 1, and the defendant's membership in
5 that conspiracy, you may also consider whether the defendant is
6 guilty of Counts 2 through 5 through the reasonably foreseeable
7 actions of his co-conspirators.

8 In other words, you may find the defendant guilty of
9 Counts 2 through 5 because he personally committed the acts
10 satisfying the essential elements, because he aided and abetted
11 others who did as defined above, or because his
12 co-conspirators -- or because his co-conspirators committed
13 these crimes in furtherance of their shared conspiracy, and
14 these acts were reasonably foreseeable to him, meaning the
15 defendant.

16 In order to find the defendant guilty of one or more of
17 Counts 2 through 5 through the actions of his co-conspirators,
18 you must find that the government proved beyond a reasonable
19 doubt the following elements with respect to each individual
20 count:

21 First, that the essential elements of the particular
22 charged offense were committed by a member of the conspiracy
23 detailed in Count 1; second, that the charged offense was
24 committed during the existence or life of the conspiracy
25 detailed in Count 1, and in furtherance of its objective; third,

1 that at the time the charged offense was committed, the
2 defendant was also a member of the conspiracy detailed in
3 Count 1; and, fourth, that the commission of the charged offense
4 was reasonably foreseeable to the defendant.

5 If you find all four of these requirements proven
6 beyond a reasonable doubt with respect to a specific substantive
7 offense, you should find the defendant guilty of that offense.
8 If any one of these requirements is not proved beyond a
9 reasonable doubt with respect to a particular count, you may not
10 rely on this theory to find defendant guilty of that count.

11 Count 6 of the indictment charges that from in and
12 around November 2012, and continuing to on or about February 7,
13 2015, the defendant, El Shafee Elsheikh, who was first brought
14 to and found in the Eastern District of Virginia,
15 Alexanda Amon Kotey, and Mohammed Emwazi and others known and
16 unknown to the grand jury did conspire to commit murder, as
17 defined by Title 18, U.S. Code Section 1111(a), by unlawfully
18 killing James Wright Foley, Kayla Jean Mueller,
19 Steven Joel Sotloff, and Peter Edward Kassig, nationals of the
20 United States, while these nationals were outside of the
21 United States, each killing being willful, deliberate,
22 malicious, and premeditated and with malice and forethought.

23 Now, that's all in violation of Title 18 U.S. Code
24 Section 2332(b)(2), which defines the offense of conspiracy to
25 murder U.S. nationals outside of the United States as follows:

1 Whoever outside of the United States engages in a
2 conspiracy to kill a national of the United States, shall, in
3 the case of a conspiracy by two or more persons to commit a
4 killing that is murder, if one or two of such persons do any
5 overt act to effect the object of that conspiracy, be punished.

6 Now, the essential elements. In order to prove that
7 the defendant is guilty of -- in order to prove the defendant
8 guilty of conspiring to murder U.S. nationals outside the
9 United States, as alleged in Count 6, the government must prove
10 beyond a reasonable doubt each and every element of the
11 following -- each and every one of the following elements:

12 First, that two or more persons entered into a
13 conspiracy, the objective of which was to murder one or more
14 nationals of the United States; second, that the defendant
15 knowingly and voluntarily became a member of the conspiracy with
16 intent to further its purpose; third, that the defendant engaged
17 in the conspiracy while outside the United States; and fourth,
18 that one or more members or one or more of the conspirators
19 committed an overt act to effect the object of the conspiracy.

20 The killing alleged in the indictment for this count,
21 Count 6, is murder as defined in 18 U.S.C. Section 1111(a).
22 Murder is the unlawful killing of a human being with malice
23 aforethought. Murdering includes any kind of willful,
24 deliberate, malicious, and premeditated killing. Malice
25 aforethought may be proved by an intent to kill or injure, or by

1 evidence of conduct that is reckless and wanton and a gross
2 deviation from a reasonable standard of care, such that you may
3 infer that the defendant was aware of the serious risk of harm
4 or serious bodily harm.

5 A killing is murder when it is perpetrated from a
6 premeditated design, unlawfully and maliciously, to effect the
7 death of any human being, including if a person intended to kill
8 someone other than who was ultimately killed. Premeditation
9 exists when a person has a fully formed conscious purpose to
10 kill, even for a moment, as long as the person has sufficient
11 time to be aware of the act he is about to commit and the
12 probable result of that act. Likewise, a killing is murder when
13 it is committed in the perpetration of or in an attempt to
14 perpetrate the crime of kidnapping.

15 Intent to kill. An intent to kill need not be
16 unconditional; that is, an intent to kill need not be an intent
17 to kill the person in all circumstances. If a person intends to
18 kill as an alternative, or if some condition or demand is not
19 complied with, that constitutes an intent to kill under the law.

20 Now, Count 7 of the indictment charges that from in or
21 around November of 2012 and continuing to on or about
22 February 7, 2015, the defendant, El Shafee Elsheikh, who was
23 first brought to and found in the Eastern District of Virginia,
24 Alexanda Amon Kotey, and Mohammed Emwazi, and others known and
25 unknown to the grand jury, did conspire to provide material

1 support or resources, as that term is defined in Title 18
2 U.S. Code Section 2339(a), namely personnel, including
3 themselves, and services, knowing and intending that they were
4 to be used in preparation for and in carrying out a violation of
5 Title 18 U.S. Code Section 1203, hostage-taking, and Title 18
6 U.S. Code Section 2332(a), murder. The deaths of James Wright
7 Foley, Kayla Jean Mueller, Steven Joel Sotloff, and Peter Edward
8 Kassig, each a citizen of the United States, as well as the
9 deaths of British and Japanese nationals, resulted from the
10 commission of this offense, all in violation of U.S. Code
11 Section 2339(a). That's what's alleged in the indictment.

12 Now, Title 18 U.S. Code Section 2339(a) provides that
13 whoever provides material support or resources, knowing or
14 intending that they are to be used in preparation for or in
15 carrying out a violation of Section 1203, hostage-taking, or
16 Section 2332, murder of a U.S. national abroad, and if the death
17 of any person results from that, they should be punished.
18 That's Section 2339(a) of Title 18.

19 Now, in order to prove Defendant guilty of a conspiracy
20 to provide material support or resources to terrorists, alleged
21 in Count 7, the government must prove beyond a reasonable doubt
22 each of the following elements:

23 First, that two or more persons entered into a
24 conspiracy, the object of which was for a co-conspirator to
25 provide material support or resources to be used in preparation

1 for or in carrying out the commission of a violation of
2 18 U.S.C. Section 1203, hostage-taking, or Section 2332, murder
3 of U.S. nationals outside the U.S. And, secondly, knowing the
4 object of the conspiracy, that the defendant joined the
5 conspiracy with intent to further its purposes.

6 Those are the two elements that the government must
7 prove beyond a reasonable doubt in order to establish -- in
8 order to carry their burden of showing that the defendant is
9 guilty of Count 7.

10 The government has also charged that this offense
11 resulted in a person's death. Therefore, when it comes time to
12 deliberate on Count 7, you must first determine whether the
13 government has proven beyond a reasonable doubt that the
14 defendant is guilty of conspiring to provide material support or
15 resources to terrorists, under the elements or in accordance
16 with the elements I've just described.

17 And if you find that the defendant is guilty of
18 conspiring to provide material support or resources to
19 terrorists, you must then determine whether the government has
20 proven beyond a reasonable doubt that at least one person's
21 death resulted from the commission of this offense. And I'll
22 give you instructions on the standard for death resulting at the
23 end of the counts.

24 Finally, Count 8 of the indictment charges that from in
25 or about 2012 and continuing thereafter, up to and including in

1 or about January 2018, in offenses committed outside the
2 jurisdiction of any particular state or district of the
3 United States, the defendant, El Shafee Elsheikh, who was first
4 brought to and found in the Eastern District of Virginia,
5 Alexanda Amon Kotey, and Mohammed Emwazi, and others known and
6 unknown, did conspire to provide material support or resources,
7 as that term is defined in United States Code Title 28
8 Section 2339(a) and (b), namely personnel, including themselves,
9 and services to a Foreign Terrorist Organization, namely ISIS,
10 which at all relevant times was designated by the United States
11 Secretary of State as a Foreign Terrorist Organization, pursuant
12 to Section 219 of the Immigration and Nationality Act, knowing
13 that ISIS was a designated Foreign Terrorist Organization, that
14 ISIS engages and has engaged in terrorist activity, and that
15 ISIS engages and has engaged in terrorism.

16 The deaths of James Wright Foley, Kayla Jean Mueller,
17 Steven Joel Sotloff, Peter Edward Kassig, each a citizen of the
18 United States, as well as the deaths of British and Japanese
19 nationals, resulted from the commission of this offense, in
20 violation of Title 18, U.S. Code Section 2339(b).

21 Now, Title 18 Section 2339(b) provides that whoever
22 knowingly provides material support or resources to a Foreign
23 Terrorist Organization, or attempts or conspires to do so, and
24 if death results of any person -- and if the death of any person
25 results, shall be punished. That's Title 18 Section 2339(b).

1 In order to prove the defendant guilty of a conspiracy
2 to provide material support to a Foreign Terrorist Organization,
3 as alleged in Count 8, the government must prove beyond a
4 reasonable doubt each of the following elements:

5 First, that two or more persons engaged in a
6 conspiracy, the object of which was for a co-conspirator to
7 provide material support or resources to a designated terrorist
8 organization, or -- that's the first element. Let me repeat it.
9 Two or more persons engaged in a conspiracy, the object of which
10 was for a co-conspirator to provide material support or
11 resources to a designated Foreign Terrorist Organization. The
12 second element is, knowing the object of the conspiracy, the
13 defendant joined the conspiracy with the intent to further its
14 purpose. And the third element is that the defendant knew that
15 the organization was a designated terrorist organization, or
16 knew that the organization had engaged in or was engaging in
17 terrorist activity or terrorism.

18 Those are the three elements of the offense in Count 8
19 that the government must prove beyond a reasonable doubt.

20 The government has also charged that this offense
21 resulted in a person's death, which is a more serious form of
22 the crime. Therefore, when it comes time to determine [sic] on
23 Count 8, you must first determine whether the government has
24 proven beyond a reasonable doubt that the defendant is guilty of
25 conspiring to provide material support or resources to

1 terrorists under the elements I've just described.

2 And if you find that the defendant is guilty of
3 conspiring to provide material support or resources to
4 terrorists, you must then determine whether the government has
5 proven beyond a reasonable doubt that the victim's death
6 resulted from the commission of this offense. And as I've said
7 with respect to the others, I'm going to give you instructions
8 on the standard for death resulting in a few minutes.

9 Now, "material support and resources," that term means
10 any property, tangible or intangible, or service, including
11 currency or monetary instruments or financial securities,
12 financial services, lodges -- lodging, training, expert advice,
13 assistance, safe houses, false documentation or identification,
14 communications, facilities, weapons, lethal substances or
15 explosives, personnel, one or more individuals who may be or
16 include oneself, and transportation, except medicine or
17 religious materials.

18 The term "expert advice" or "assistance" means advice
19 or assistance derived from scientific, technical, or other
20 specialized knowledge.

21 Personnel. The defendant can be convicted for a
22 violation of this statute in connection with providing personnel
23 if you find he conspired to provide one or more individuals,
24 including himself, to work under ISIS's direction or control.
25 Individuals who act entirely independently of the

1 Foreign Terrorist Organization to advance its goals or
2 objectives are not considered to be working under the
3 Foreign Terrorist Organization's direction or control.

4 If you find that the object of the conspiracy was
5 merely to provide a person who would work independently of the
6 organization to advance shared goals or purpose, that does not
7 suffice as conspiring to provide personnel to the organization.
8 Agreeing merely to be present with other members of the
9 organization, but not under its direction or control, is not
10 agreeing to provide personnel within the meaning of the statute.

11 To find that the defendant conspired to provide
12 personnel, you must conclude that the object of the conspiracy
13 was to provide a person to ISIS who would work under its -
14 meaning ISIS's - direction or control, rather than act
15 independently of the organization.

16 The reference to service -- service refers to concerted
17 activity, not independent advocacy. Service means the
18 performance of work commanded or paid for by another, or an act
19 done for the benefit or the command of another.

20 The term "Foreign Terrorist Organization" has
21 particular meaning under 18 U.S.C. Section 2339(b). In order
22 for an organization to qualify as a Foreign Terrorist
23 Organization, the organization must have been designated as such
24 by the Secretary of State through a process established by law.

25 I instruct you as a matter of law that ISIS, or the

1 Islamic State, has been designated a Foreign Terrorist
2 Organization by the United States Secretary of State, and was so
3 designated under a previous name, Al-Qaeda in Iraq, by the
4 Secretary of State on October 15, 2004. I instruct you that in
5 May 2014, the Secretary of State amended the designation to add
6 the alias Islamic State of Iran [sic] and the Levant (ISIL) as
7 the primary name of this Foreign Terrorist Organization, and
8 added the following aliases to the ISIL listing:

9 Among others, the Islamic State of Iran [sic] and
10 al-Sham (ISIS); the Islamic State of Iraq and Syria (ISIS), and
11 Daesh. I think what I meant was Islamic State of Iraq and
12 Syria, and Daesh, which is another term for ISIS.

13 The term "terrorist activity" includes any activity
14 that, had it been committed in the United States, would be
15 unlawful under the laws of the United States or any state, and
16 it involves the seizing or detaining or threatening to kill,
17 injure, or continue to detain another individual in order to
18 compel a third person, including a government organization, to
19 do or to abstain from doing any act as an explicit or implicit
20 condition for the release of the individual seized or detained,
21 or the use of any explosive, firearm, or other weapon or
22 dangerous device other than for mere personal monetary gain, to
23 attempt to endanger, directly or indirectly, the safety of one
24 or more individuals, or to cause substantial damage to property.

25 To engage in terrorist activity means to commit or

1 incite the commission of terrorist activity with the intention
2 to cause death or serious bodily injury, to prepare for or plan
3 terrorist activity, or to gather information on potential
4 targets for terrorist activity, or to solicit funds for
5 terrorist activity.

6 The term "terrorism" means premeditated
7 politically-motivated violence perpetrated against the
8 noncombatant targets by sub-national groups or clandestine
9 agents.

10 A conviction on Count 8 requires proof that the
11 defendant conspired to provide material support to an
12 organization designated as a Foreign Terrorist Organization.
13 It's not a crime if the defendant conspired to provide material
14 support to an individual who happens to be a member of a
15 terrorist organization, if the defendant did not know that the
16 material support would benefit the Foreign Terrorist
17 Organization.

18 In other words, you must conclude that the defendant
19 knew that the material support he conspired to provide would
20 support the organization, not merely that it would benefit a
21 particular person who also happened to be a member of that
22 organization.

23 It is a crime if the defendant conspired to provide
24 material support to an organization by providing material
25 support to a member of that organization so long as he knows

1 that the material support would ultimately benefit the
2 organization, not merely the person in his individual capacity.

3 If you find that the defendant knew that a person to
4 whom he conspired to provide material support was a member of a
5 Foreign Terrorist Organization, you may consider that fact in
6 determining whether the defendant also knew that the material
7 support would ultimately benefit the organization. But it is
8 not sufficient for a conviction to conspire to provide material
9 support to a member of a Foreign Terrorist Organization without
10 knowing that the material support would also benefit the
11 organization.

12 Now, the government has charged that the offenses in
13 Counts 1 through 5, 7, and 8 each resulted in the death of one
14 or more persons named in the indictment. That means that if you
15 conclude that the government has proved beyond a reasonable
16 doubt every element of an offense I have previously explained --
17 as I've previously explained, you must then determine whether
18 the government has also proved beyond a reasonable doubt that a
19 death resulted from the commission of the offense.

20 Now, in order to prove that a death resulted from the
21 commission of an offense, the government must prove beyond a
22 reasonable doubt that the person's death was a consequence of
23 the offense being committed. That means that the government
24 must prove beyond a reasonable doubt that but for the commission
25 of the offense, the victim would not have died.

1 It is sufficient if the government proves that the
2 commission of the offense combined with other factors to cause
3 the victim's death, as long as these other factors would not
4 have resulted in the victim's death, regardless of whether the
5 offense happened. The government is not required to prove that
6 the defendant or anyone else intended to cause harm to --
7 intended to cause the victim's death, or that the victim's death
8 was foreseeable to the defendant or others. The government does
9 not have to prove that any act personally done by the defendant
10 caused the victim's death. It needs to prove beyond a
11 reasonable doubt only that the defendant is guilty of committing
12 the offense under the law previously explained to you, and that
13 if the offense had not been committed, the victim would not have
14 died.

15 If a particular count alleges the death of more than
16 one person, it is sufficient for the government to prove beyond
17 a reasonable doubt only that one such death resulted from that
18 offense. The government need not prove that the offense
19 resulted in the death of every victim alleged in the count.

20 If you conclude that the government has proven beyond a
21 reasonable doubt that the defendant committed an offense charged
22 in Counts 1 through 5, 7, or 8, but that the government has not
23 proved beyond a reasonable doubt that a death resulted from that
24 offense, you should write "guilty" as to that offense on your
25 verdict form, which I'll explain to you in just a minute - I'll

1 explain the verdict form - but check the box stating that death
2 did not result from the commission of the offense.

3 If you conclude that the government has proved beyond a
4 reasonable doubt both that the defendant committed an offense
5 charged in Counts 1 through 5, 7, or 8, and that a death
6 resulted from that offense, then you should write "guilty" as to
7 that offense, and check the box stating that a death resulted
8 from the commission of the offense, and that the defendant is
9 therefore guilty of the more serious resulting in death offense.

10 Now, we are near the end. You must not base your
11 verdict in any way on sympathy or bias or guesswork or
12 speculation. Your verdict must be based solely on the evidence
13 and the instructions given to you by the Court.

14 Your verdict must represent the considered judgment of
15 each juror. In order to return a verdict, it's necessary,
16 therefore, that each juror agree to verdict. In other words,
17 your verdict must be unanimous. It is your duty as jurors to
18 consult with one another and to deliberate with a view to
19 reaching an agreement, if you can do so without violence to your
20 individual judgment. You must each decide the case for
21 yourself, but do so only after an impartial consideration of the
22 evidence in the case with your fellow jurors.

23 And in the course of your deliberations, do not he
24 hesitate to reexamine your own views and to change your opinion,
25 if convinced it is erroneous. But do not surrender your honest

1 conviction as to the weight or effect of the evidence solely
2 because of the opinion of your fellow jurors, or for the mere
3 purpose of returning a verdict. Remember at all times you're
4 not partisans. You're judges, judges of the facts. Your sole
5 interest is to seek truth from the evidence in the case.

6 Now, the punishment provided by law for the offenses
7 charged in the indictment is a matter exclusively within the
8 province of the Court, and should never be considered by the
9 jury in any way in arriving at an impartial verdict as to the
10 offenses charged.

11 Now, during your deliberations, you must not
12 communicate with or provide any information to anyone by any
13 means about this case. You must not use any electronic device
14 or media. I'm not going to list all the potential electronic
15 devices or media, but you can't use any of it. You can't speak
16 to anybody about this case during your deliberations using any
17 electronic means. No chat rooms or blogs or websites, anything
18 like that. You can't communicate to anyone any information
19 about this case, or to conduct any research about this case,
20 until I accept your verdict. And at that time, when you're all
21 done, I'll have some suggestions and instructions for you.

22 Now, when you retire to the jury room, you will select
23 one of your members to act as your foreperson, and your
24 foreperson will preside over your deliberations and will be your
25 spokesperson here in court.

1 Now, forms of the verdict have been prepared for your
2 convenience, and I'm now going to explain the form of the
3 verdict to you. The verdict form is -- anyone who wishes to
4 stand, you may do so. The form of the verdict is five pages,
5 and I'm going to explain them to you.

6 First, there is the name of the case, United States
7 against El Shafee Elsheikh, and it says, "Verdict Form." And
8 then the next thing is Count 1, and Count 1 is labeled
9 "conspiracy to commit hostage-taking." And it says, 1A: We the
10 jury unanimously find the defendant, El Shafee Elsheikh, either
11 guilty or not guilty. That's a decision you must make, and you
12 have to write in either "guilty" or "not guilty" there.

13 If the jury find that the defendant is guilty of
14 conspiring to commit hostage-taking under Count 1, then you have
15 to answer 1B. If you find that the defendant is not guilty of
16 conspiring to commit hostage-taking under Count 1, you don't
17 have to answer any other questions and you can go to Count 2.
18 But if you find that he's guilty as to Count 1, and you write in
19 "guilty," you must answer the question on 1B. And, of course,
20 as you know, that's the question about death resulting.

21 There, 1B says -- there are two things. One is, "We
22 the jury unanimously find that a death resulted from the
23 commission of this offense, and that the defendant is therefore
24 guilty of conspiring to commit hostage-taking resulting in
25 death." If you find that beyond a reasonable doubt, you check

1 that.

2 Right below that it says: "We the jury unanimously
3 find that death did not result from the commission of this
4 offense, and that defendant is therefore not guilty of
5 conspiring to commit hostage-taking resulting in death." If you
6 reach that conclusion, you put a check there.

7 Then we go to page 2, which is labeled at the top
8 "Count 2, Hostage-Taking." And this one refers to
9 James Wright Foley. It's 2 through 5 as to each one of the
10 hostages. And under 2A it says: "We the jury unanimously find
11 the defendant, El Shafee Elsheikh" - and as you may find, either
12 guilty or not guilty, you write that in - "of hostage-taking as
13 charged in Count 2 of the indictment."

14 Now, again, as with Count 1, if you find the defendant
15 guilty of hostage-taking under Count 2, you have to answer
16 Question 2B. If you find the defendant is not guilty of
17 hostage-taking under Count 2, you don't have to answer 2B and
18 you can go on to Count 3.

19 And 2B is very much like 1B: "We the jury unanimously
20 find that James Wright Foley's death resulted from the
21 commission of this offense, and that the defendant is therefore
22 guilty of hostage-taking resulting in death." If you find
23 unanimously that the evidence warrants that, you check that.

24 Under 2B, it's also: "We the jury unanimously find
25 that James Wright Foley's death did not result from the

1 commission of this offense, and that the defendant is therefore
2 not guilty of hostage-taking resulting in death." If that's
3 your conclusion, check that.

4 Then we go to Count 3. Count 3 is essentially the same
5 as Count 2, except it refers to Kayla Jean Mueller. And, again,
6 you'll have an opportunity to write whether you find the
7 defendant, El Shafee Elsheikh, guilty or not guilty of that.

8 And then you'll have -- if you find him guilty, you
9 have to answer 3B. If you find him not guilty, you don't have
10 to answer question 3B.

11 Count 4, similar. Count 4 refers to
12 Steven Joel Sotloff. And, again, 4A says: "We the jury
13 unanimously find the defendant, El Shafee Elsheikh," either
14 guilty or not guilty, as you may conclude. And if you find that
15 he's guilty, you have to answer 4B. If you find he's not
16 guilty, you need not answer 4B.

17 Count 5, similarly, but this one relates to
18 Peter Edward Kassig. And, again, under 5A, you have a place to
19 mark whether you find the defendant -- unanimously find the
20 defendant guilty of hostage-taking as charged in Count 5. If
21 you find he's not guilty, you don't have to answer 5B. If you
22 find he is guilty, you must answer 5B.

23 Count 6 is entitled "Conspiracy to Murder
24 U.S. Nationals Outside the United States." And, again, 6 says:
25 "We the jury unanimously find defendant, El Shafee Elsheikh,"

1 either guilty or not guilty, as you may find, "of conspiring to
2 murder U.S. nationals outside the United States as charged in
3 Count 6 of the indictment."

4 Then, Count 7 of the indictment is titled "Conspiracy
5 to Provide Material Support to Terrorists." And 7A says: "We
6 the jury unanimously find the defendant, El Shafee Elsheikh,"
7 either guilty or not guilty, as you may find, you write that in,
8 "of conspiring to provide material support to terrorists, as
9 charged in Count 7 of the indictment."

10 If you find that the defendant is not guilty of
11 conspiring to provide material support to the terrorists as
12 charged, you don't have to answer 7B. But if you find he is
13 guilty, you must go on and decide 7B, where you can write,
14 either: "We the jury unanimously find that the death resulted
15 from the commission of this offense, and that the defendant is
16 therefore guilty of conspiring to provide material support to
17 terrorists resulting in death," or, as you may find, "We the
18 jury unanimously find that a death did not result from the
19 commission of this offense, and that the defendant is therefore
20 not guilty of conspiring to provide material support to
21 terrorists resulting in death."

22 Then the last page of the verdict form is Count 8.
23 It's titled "Conspiracy to Provide Material Support to a Foreign
24 Terrorist Organization." And, again, this one has a place for
25 you to mark whether you find unanimously the defendant guilty or

1 not guilty of conspiring to provide material support to a
2 Foreign Terrorist Organization as charged in Count 8.

3 And, again, if you find he's not guilty, you need not
4 answer the questions on 8B. If you find he is guilty, you must
5 answer the questions by checking either, "We the jury
6 unanimously find that a death resulted from the commission of
7 this offense, and that defendant is therefore guilty of
8 conspiring to provide material support to terrorists resulting
9 in death." Or you may find, "we the jury unanimously find that
10 a death did not result from the commission of this offense, and
11 the defendant is therefore not guilty of conspiring to provide
12 material support to terrorists resulting in death."

13 So that's the verdict form. Now, you will take this
14 form to the jury room, and when you've reached your unanimous
15 agreement as to your verdict, you will have your foreperson fill
16 in, date, and sign the form setting forth your verdict on which
17 you've unanimously agreed, and then return your verdict to the
18 court here.

19 Now, I think it is proper to add the caution that
20 nothing in these instructions and nothing in any form of the
21 verdict prepared for your convenience is meant to suggest or to
22 convey to you in any manner or way any intimation as to what
23 verdict I think you should find. What the verdict is or shall
24 be is your sole and exclusive duty and responsibility.

25 Now, when you retire to the jury room, you'll select

1 one of your number to serve as your foreperson. The foreperson
2 will preside over your deliberations and will be your
3 spokesperson here in court. I think I already mentioned that to
4 you.

5 Now, if it becomes necessary during your deliberations
6 to communicate with the Court, you may send a note by the court
7 security officer, and he'll be right outside the door of the
8 area in which you're going to be deliberating. And no member of
9 the jury should ever attempt to communicate with the Court by
10 any means other than by a signed writing, and the Court will
11 never communicate with any member of the jury on any subject
12 touching the merits of the case, other than in writing or orally
13 here in open court. Now, I may communicate with you on some
14 matter not relating to the merits of the case, such as how long
15 you wish to deliberate and that sort of thing.

16 You'll note from the oath about to be taken by the
17 court security officer that he, too, as well as all other
18 persons, are forbidden to communicate in any way or manner with
19 any member of the jury on any subject touching the merits of the
20 case.

21 You may administer the oath to the court security
22 officer.

23 (Oath administered by courtroom deputy clerk.)

24 THE COURT: All right. Ladies and gentlemen, I'm now
25 going to release you to go into the jury room to begin your

1 deliberations. But before I do so, I think it has been apparent
2 to some of you the number of jurors that will deliberate in this
3 case. The number of jurors who will deliberate is 12. It is
4 the first 12 of you plus the first alternate, because we've
5 already excused one juror.

6 So the jurors to be excused are Number 22, that's
7 Ms. McCrea; Mr. Hoge; Eileen Liles, Ralph Stallings, and
8 Laura Buschman. Did I pronounce that correctly?

9 Well, I can now excuse you. But let me underscore our
10 gratitude to you. We could not have proceeded without your
11 participation in this case. Now, you will not be deliberating,
12 unless there are some very unusual circumstances that arise. So
13 I want you to take your books, you may go home, but do not
14 discuss the case with anybody yet. When it's all over and a
15 verdict has been returned, you'll receive word from the clerk's
16 office that the case is over, and then you may discuss the case
17 with whoever you please.

18 But in that regard, let me add a caution that I will
19 repeat when the case is over. It is always disturbing to me
20 when I read in the media or the press jurors discussing what
21 went on during the course of their deliberations or what went on
22 during the course of the trial. Certainly for those who
23 deliberate, I think you owe each other a duty of
24 confidentiality. It's a matter for you to decide. I won't
25 order you to do it, but I think you owe each other a duty of

1 confidentiality. I think if people knew about what happens in
2 deliberations, it does an injury to the deliberative process.
3 People would not feel free to give a full and complete
4 expression of their views if they thought it was going to be
5 grist for the media mill. So I tell you that in advance.

6 And you-all, I ask that you not to discuss the matter
7 with anybody completely until the case is over. And we will
8 call you immediately when that occurs.

9 So, again, you may go home now, but I thank you for
10 your service. We couldn't have done this without you. You are
11 an essential part. I don't know whether you're relieved or
12 disappointed. But you get to go home now.

13 Thank you. You may follow the court security officer.

14 Usually, counsel, I have counsel at the bench to do
15 that, but I'm sure if you had any different views about who was
16 to be excused and who was not, you would have told me.

17 MS. GINSBERG: Your Honor, we rely on the deputy clerk
18 to have kept track.

19 THE COURT: The answer is no, that it's no different.
20 I do too, but I have my own markings. But I think she is
21 correct.

22 Any problem with that, Mr. Fitzpatrick?

23 MR. FITZPATRICK: No, Your Honor.

24 THE COURT: All right. Now, of course you can stand.
25 Now I'm going to release you to go into the jury room.

1 Actually, the jury room for this courtroom is different from the
2 one you're going to be deliberating in. Right?

3 COURT SECURITY OFFICER: We'll be in the big conference
4 room.

5 THE COURT: Big conference room, but that's not the
6 jury room. This courtroom has been here since 1995. Before
7 that, we were on Washington Street in a courthouse that was
8 built 80 years ago. And when we built this courtroom, or this
9 courthouse, jury rooms, because we had old-fashioned judges who
10 are all gone except me - no, there's one more left - they
11 designed the jury rooms to be very small to kind of encourage
12 jurors to get it done.

13 We don't do that anymore. You're in a much larger
14 room, and we're going to guarantee that you have whatever
15 conveniences you need, drinks, snacks, and the like, and you may
16 deliberate as long or as little as you like. That's a matter
17 entirely up to you.

18 Now, do not begin your deliberations until all of the
19 exhibits are brought in, the jury verdict form is brought in,
20 the tape recorder with my instructions is brought in.

21 And are there already devices to play the exhibits if
22 there are videos? They're already in there.

23 COURTROOM CLERK: Yes, Judge.

24 THE COURT: And once all of that is brought in and the
25 door is closed and all 12 of you are there, then you may begin

1 your deliberations. But not until then. And if any one of you
2 needs to use the facilities or needs to be excused, cease your
3 deliberations. You can't talk about the case - which is
4 deliberating - unless all 12 of you are there. And, as I've
5 said once or many times, I'll say it again: You may deliberate
6 as long as or little as you prefer.

7 All right. You may follow the court security officer
8 to the jury room, and I'll have the material brought in
9 promptly.

10 (Jury out at 3:13 p.m.)

11 THE COURT: All right. It's 3:15. I would ask that
12 you tell the deputy clerk where you can be reached if she --
13 Ms. Randall is a jewel. And I've been trying cases for
14 35 years, and she is at the top of the list of deputy clerks.
15 She makes everything a lot easier, which is very important,
16 because, as you get older, you don't really -- you don't stay on
17 top of everything as much as you did.

18 You-all are very fortunate you weren't here in the mid
19 '80s, when I first came here. I shudder to think what I was
20 like. All right.

21 Is there anything else to be accomplished right now on
22 behalf of the government?

23 MR. FITZPATRICK: No, Your Honor.

24 THE COURT: Ms. Ginsberg, on behalf of the defendant,
25 or Mr. MacMahon?

1 MS. GINSBERG: No, Your Honor, nothing else.

2 THE COURT: All right. Mr. Deubler and Mr. Ellis,
3 everybody is here. I won't mention everybody.

4 I want to thank counsel for your cooperation. You did
5 expedite this case. It was scheduled to last three weeks; it
6 didn't. And that's largely due not to any effort of mine, but
7 to your efforts to move things along and to cooperate. And I
8 appreciate it. They don't know this as well, but I'm sure they
9 would appreciate it, "they" meaning the jury.

10 Thank you. Remember, we may need to reach you if there
11 are any questions or a verdict. Court stands in recess.

12 (Recess taken at 3:15 p.m.)

13 THE COURT: Thank you for assembling so quickly. This
14 is, I think, largely inconsequential, but I wanted to do it.

15 In the course of providing the instructions to the
16 jury, I omitted two and a half lines. I doubt seriously that
17 you were unaware of it.

18 But typically what I do is I have counsel at the bench
19 following instructions, and I inquire whether they have any
20 objection, or whether I carefully read or provided the
21 instructions in accordance with the instructions conference.
22 But it's been brought to my attention that I omitted three lines
23 on page 5.

24 MS. GINSBERG: Is that the stipulation?

25 THE COURT: Yes.

1 MS. GINSBERG: Yes, I think we both saw that,
2 Your Honor.

3 THE COURT: I would be shocked if you hadn't.

4 MS. GINSBERG: And I think it's fair to say that
5 neither of us objected to that being omitted.

6 THE COURT: All right. I wanted that on the record.

7 MR. FITZPATRICK: The government concurs.

8 THE COURT: It's inconsequential because the sentence I
9 did give right before that says, "The evidence consists of any
10 facts that have been agreed or stipulated to."

11 So I think there's no question that they know that's
12 part of the factual record, and I'm not surprised that you-all
13 were aware that I had omitted the two and a half lines that
14 followed that. But in the old days you would have brought that
15 to my attention. It was brought to my attention, it's
16 inconsequential. If there's no objection, we're not going to do
17 anything about it.

18 Any objection on behalf of the government?

19 MR. FITZPATRICK: None from the government, Your Honor.

20 MR. MACMAHON: Your Honor, I was following along and
21 not Ms. Ginsberg. You also told the jury the same thing every
22 time you read a stipulation, so we wouldn't have any objection.
23 I think the jury was told every instruction as the evidence came
24 in.

25 THE COURT: Thank you for that addition. Yes, I agree

1 with that.

2 I'm sorry if I have disturbed your afternoon of work,
3 but I wanted to go ahead and make that clear for the record.
4 And I will reassemble you only if there is a question or a
5 verdict. I intend to allow the jury to deliberate as long as
6 they wish today or tomorrow, and I will let you know as soon as
7 I hear from them.

8 Thank you.

9 (Recess taken at 4:09 p.m.)

10 THE COURT: We have a note from the jury indicating
11 they want to go home and return. It says: "Your Honor, we are
12 recessing at 5:40 p.m. on the 13th of April, 2022. We will
13 resume deliberation at 10 a.m. the 14th of April, 2022, signed
14 Camille Morrison, Number 30."

15 She's not recessing. I will recess. I will
16 reconvene --

17 MS. GINSBERG: I think they took your directions a
18 little bit too far.

19 THE COURT: Yes, they did.

20 I will make this a part of the record. You-all may
21 review it if you wish at the podium or the clerk's table when we
22 recess.

23 Bring them in, please.

24 (Jury in at 5:50 p.m.)

25 THE COURT: Ladies and gentlemen, I have your note,

1 which reads: "Your Honor, we are recessing at 5:40 p.m. on the
2 13th of April, 2022. We will resume deliberation at 10 a.m.
3 14th of April, 2022, signed Camille Morrison, Number 30."

4 I told you you could deliberate as long or as little as
5 you like. That doesn't mean you can recess when you want to and
6 you can resume when you want to. But you can. So don't worry
7 about it. I will do the recessing and I will do the resumption
8 of deliberation.

9 But this evening when you get home, as usual, you must
10 refrain from discussing the matter with yourselves or with
11 anyone, or undertaking any investigation on your own. And we
12 will, as you request, return tomorrow morning at 10:00.

13 I take it you don't want to return at 9:00? All right.
14 We'll return at 10:00 and I'll convene you again, we'll go
15 through the usual, and you'll be permitted to retire and
16 continue your deliberations.

17 Remember, now, you may not discuss the matter with
18 anyone or among yourselves. All right. You may follow the
19 court security officer out.

20 (Jury out at 5:51 p.m.)

21 THE COURT: Court stands in recess until 10 o'clock
22 tomorrow morning.

23 (Off the record at 5:52 p.m.)
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

__//Rebecca Stonestreet//__

__10/24/22__

SIGNATURE OF COURT REPORTER

DATE